# Proceedings of the Council

OF THE

# LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

# MAKING LAWS AND REGULATIONS.

**Vol. VI.—Part I.**

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1872.

# PROCEEDINGS

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# COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

## Purpose of making Laws and Regulations.

*Saturday, the 6th January* 1872.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*
J. Graham, Esq., Advocate-General,
H. L. Dampier, Esq.,
A. R. Thompson, Esq.,
V. H. Schalch, Esq.,
S. C. Bayley, Esq.,
C. Bernard, Esq.,
Moulvie Abdool Luteef, Khan Bahadoor,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
Rajah Jotendro Mohun Tagore, Bahadoor,
Baboo Digumber Mitter,
and
B. D. Colvin, Esq.

### JUSTICES' BORROWING POWERS.

His Honor the President said that the members would observe that there was not on the paper any notice of motion in respect to the Bill for extending the borrowing powers of the Justices of the Peace for the town of Calcutta. He believed that the reason why the hon'ble member in charge had not moved further, was that a letter had been addressed to the Secretary to the Government of Bengal by Mr. Stuart Hogg, the Chairman of the Justices, begging for a postponement of this Bill for three weeks or thereabouts, in order to give the Justices an opportunity of considering the amendments which had been made in the Bill. His Honor had been somewhat surprised that the Chairman of the Municipality, who had urged so much speed in respect to this Bill, should have asked for so much delay; but at the same time he quite admitted that the principle involved in the amendments which had been made at his suggestion—the principle of establishing by law a sinking fund to compel the municipality

to repay within a certain number of years the money which they borrowed—was a principle of very great importance, and His Honor for his own part was not anxious that the consideration of that question should be hurried or precipitated. He would only say that if these works ought really to be executed, it was very desirable that they should be executed quickly, and he hoped that the Justices would consider the matter and make up their minds as soon as possible. In respect to this matter, he for one had a very strong opinion that it was absolutely necessary, in justice to those who came after us, that provision should be made to establish a sinking fund for the liquidation of sums borrowed for purposes which, though they would last to future time, would no doubt undergo a considerable amount of depreciation, and which possibly posterity would not value so much as we did. He thought that what had been told us by one or two hon'ble members of the Council was sufficient to show us the necessity of making such a provision. Although he would admit that the municipality had hitherto been in the main prudent in their arrangements without being compelled to establish such a fund, still they had seen that when difficulties arose the operation of that fund had been suspended for a whole year, when nothing was paid towards it. We also knew that the municipality of Bombay had been in difficulties of the same kind in consequence of the law not providing the machinery for enforcing payments towards a sinking fund; and those provisions not being enforced, were set aside and not carried into effect. He therefore expressed the confident hope that while the Council would give the utmost consideration to the wishes of the Justices in regard to the shape and manner in which this proposal regarding a sinking fund should be carried out, still the principle could not be, and would not be, abandoned. He trusted that no Bill would be passed in this Council that would not contain a provision of this kind. As His Honor had stated the substance of the communication received from the Chairman of the Justices, he thought it would be unnecessary to ask the Secretary to read out the letter.

## MOFUSSIL MUNICIPALITIES.

Mr. Bernard moved that the Bill to amend the law relating to Municipalities in Bengal be read in Council. He said that when the Council granted leave to bring in the Bill, he had explained that the object of its provisions was rather to consolidate the existing law than to make a new one. He would now trouble the Council with a short reference to some of the principal parts of the Bill. First, he would try to meet a possible objection that the Bill was too long and too intricate to be applicable to all the large and small municipalities in Bengal. It was indeed quite true that the Bill was a long one; but after all it was much shorter than the laws it was intended to replace. It was one Bill of 234 sections in place of eight laws containing 381 sections. The Bill was divided into parts and chapters, and each part contained a distinct subject. The Secretary to the Council had taken much pains to arrange the Bill as

and would not all be applied to smaller towns; and, further, in the smaller townships parts XI, XII, and XIII, with one chapter of part III, would only apply; so that the proposed Bill would, he hoped, be less unwieldy and more easily intelligible than the old law. The Bill provided for three classes of municipalities. All cities and large towns would probably fall under classes 1 and 2, while the little rural townships would come under the third class. Any sections of the Bill, except part XII, could be extended to the first and second class municipalities. The main distinction between the first and second class municipalities consisted in this, that in class 1 the annual tax on persons, according to their circumstances and property, might reach Rs. 4 a building, while in municipalities of the second class it might not exceed Rs. 2 a building. No town or place where more than half the people made their living by agriculture could be made a first or second class municipality, but such places might be created third class municipalities, wherein was allowed only one form of tax, which might not exceed an average of one rupee a year for each building.

The governing body in the first and second class municipalities were called "municipal commissioners" as heretofore; they might be appointed by the Lieutenant-Governor, or they might be elected under such rules as might be laid down. The number of municipal commissioners was, as at present proposed, not to exceed seven, besides the appointed or elected commissioners, who might not exceed one-third of the whole number. Thus a municipal body might consist of ten members, out of whom seven might be elected and three might be ex-officio; or it might consist of seven members, out of whom two might be ex-officio. Ordinarily, municipal commissioners would hold office for three years, but would be eligible for re-election. Thus there would be ample safeguards against the governing body of any municipality being unduly weighted with official members, and against its members holding office too long and thus sinking too much into a groove. The Hon'ble President on a previous occasion had drawn attention to the fact that the new Bill provided for the *election* of municipal commissioners. It had sometimes been said that members of municipal committees were mere dummies, that they were nominees of the collector and of the sub-divisional officer, whose views they were bound to carry out. It was indeed true that the members of municipal committees were generally nominated by the local officers, but he (Mr. Bernard) was sure that each officer made the best possible nominations according to his lights, and that no nominee was expected to subordinate his own individual opinion to the collector's; still it would be an undoubted advantage if townspeople would elect their own repr[illegible]atives. The plan of holding municipal elections had indeed been tried [illegible]ed by [illegible]ral parts of India, but so far as he had heard, no great succe[illegible]ion would [illegible] been obtained—that was to say, no very large proportion of the [illegible]e a month [illegible]t. A fresh assess vote, and there was little competition among the candidates. [illegible]he old assessment migh belonged to the higher and the monied classes, from whi[illegible] houses was of the kin commissioners used to be taken. So far as he knew, the wo[illegible] The assessment in eac not yet returned a representative man to any Indian municip[illegible]e published and revise

had occurred where, after repeated annual elections, nearly 1,500 electors had gone to the poll out of a total population of 20,000 rate-paying adult males. We must not expect that keen contest, which perhaps after all was not very desirable, would occur in the Bengal towns for the election of municipal commissioners; but at any rate some plan for electing representatives was the only substitute of frequent nominations, which might more or less affect the independence, or, at any rate, the reputed independence, of municipal commissioners. It was proposed that the chairman of a municipality should still be an official. As Indian society was now constituted, the head of a municipality must, Mr. Bernard thought, still be an official. The vice-chairman was to be elected by the commissioners from among their own body.

By chapter 2 of part II, the town roads and streets were vested in the municipal commissioners, and power was taken to vest all hospitals, rest-houses, schools, tanks, and wells, not being private property, in the commissioners. If a body of commissioners were loyal to their town, and were also fairly intelligent, it seemed to Mr. Bernard that they would, in ordinary times, be the fittest people to manage and direct public institutions intended for the benefit of the townspeople. It was not proposed to transfer to the commissioners colleges which drew their pupils from a much larger area than a mere township. Of course private schools, schools belonging to missions or to other religious bodies, would not be affected by this provision. If the Council saw fit to permit the devotion of municipal money to educational purposes, then it seemed to be a fair corollary of such an arrangement that the municipal commissioners should have a voice in the management of their town-schools. Care was taken that no private rights should be over-ridden by action under this section, for it was provided that no such institutions should vest in the commissioners until the intention so to vest them should have been notified in the vernacular for the space of one month.

The next chapter provided for the powers of the commissioners. As in former Acts, a distinction was drawn between the powers exercised by the commissioners at a meeting and the powers exercised by the commissioners. The latter powers could be exercised in cases of emergency by the chairman and vice-chairman. It had occasionally been said that this delegation of the powers of commissioners to its officers in reality threw all the municipal power into the hands of the chairman in places where the commissioners were lazy or complaisant, or where the chairman might be overbearing; but it seemed quite impossible to avoid giving the chairman power to act on an emergency. It had, however, been provided that the chairman or vice-chairman, whenever they acted under these special powers, must report the circumstance at the next meeting of the commissioners. In this way the commissioners would have full power to challenge any measure of which they might disapprove. The duty of appointing officers and servants to work under the commissioners was left in the hands of the chairman; and in the smaller towns, at any rate, this seemed the better plan. The power of allotting salaries would be wholly with the commissioners, so that the power of the

power in this matter would be with them. Provision was made for the appointment of ward-committees, who in large towns would take up such of the municipal business as the commissioners might allot to them. It seemed best that these ward-committees should be entirely subordinate to the commissioners, and therefore no business except the assessment of the house-tax was expressly made over to these ward-committees by the Bill.

Part III of the Bill provided for the different forms of municipal taxation. Seven kinds of taxes were permissible; but it could not be too often repeated that it was by no means necessary, nor was it desirable, that *all* the forms of taxation should be applied in the same municipality. Perhaps in a rich municipality like the suburbs of Calcutta, where there were rich people of many classes, two or more forms of taxation might be adopted; for the carriage-tax would touch one class, the trades and callings license-tax would fall on an entirely different class, the house-tax would be paid by classes who would not pay either of the other taxes. But in the smaller municipalities the commissioners would not ordinarily adopt more than two forms of taxation, and wherever any general plan of town-duties was adopted, the house-tax would probably not be levied. Five of the proposed forms of taxation had already been sanctioned for places in Bengal by this Council. The two new forms of taxation were the tax on processions and the town-duties or bazar dues. It might probably be objected that the procession-tax would be something like the feast-tax, which was proposed and thrown aside in Bombay last year, but Mr. Bernard did not think that the two proposals covered the same ground. Already in some towns the bye-laws required that no procession should go through the streets of a town without a license. There could be no doubt but that such processions were a nuisance to some extent to the townspeople. If such processions were to be licensed at all, there seemed to be no reason why the license should not be paid for. The impost would fall entirely on the rich, and it must always be remembered that the commissioners need not adopt this form of taxation unless they chose to do so. Town-duties were indeed new in Bengal; but a great deal had lately been said regarding the unsuitability of direct taxation to India, and a system of octroi-duties was the only plan of raising municipal revenues by indirect taxation. Town-duties obtained in many cities of northern India and in some European cities. Against octroi-duties it was to be said that they raised the price of the food of the poor, and that they did to some extent impede trade.

The other chapters of part III provided the procedure for assessing the several taxes. The tax on persons was to be assessed by ward-committees or by the commissioners themselves. Full publication would be given of every man's assessment, and every man would have a month to urge any objection he might have against such assessment. A fresh assessment might be made once in every three years, but the old assessment might always be renewed for a further term. The tax on houses was of the kind provided by Act III of 1864 passed by this Council. The assessment in each case was to be made by the commissioners, and would be published and revised

by them. The tax on carriages and wheeled vehicles had been borrowed from Act III of 1864. It might be assessed by the commissioners; it would touch the rich, and probably would not be adopted in small towns. The maximum tax on carts was two rupees a year per cart, and the tax would not be leviable on the carts of outsiders who might only resort occasionally into municipal limits. The tax on trades and callings was the same that had been adopted by this Council in Act VI of 1863. It would probably be adopted in large towns or cities only. The Bill provided a limit of taxation for each of the different classes of trades. The assessment was to be made in first class municipalities by a sub-committee of the commissioners. Regarding the tax on processions Mr. Bernard had already remarked, and he had only to add that the mode of collection was simple enough. It seemed difficult to lay down by law the precise rules, conditions, and restrictions under which town-duties should be collected: so the Bill took power for the commissioners to frame bye-laws on this matter, subject to the Lieutenant-Governor's approval; whilst it enacted that the bye-laws must provide for relieving through traffic from all burdens, and that the tariff of duties should in no case exceed two per cent *ad valorem*. Tolls on roads and at ferries were already a general source of local revenue in Bengal. Mr. Bernard, for his part, did not think that road tolls were a good source of local revenue for an Indian district or an Indian town. The through traffic often went out of its way to avoid such tolls, while a toll bar was really a very great burden to the people who might happen to live close to the road on either side. In most counties of England road-tolls were now discontinued, to the satisfaction of the farmers and of the town population; but road-tolls already existed in several Bengal municipalities. If the people preferred that form of taxation, they might be allowed to adopt it so long as such tolls did not restrain general traffic. Tolls at ferries within municipal limits were a very legitimate source of revenue to the municipality, on whom would rest the obligation of providing an efficient ferry-service. The rules provided by existing laws for preventing oppression or exaction at toll-bars were incorporated into the present Bill. The clauses of the Bill which provided for the recovery of municipal taxes were in no way new; they provided for the distress and sale of the defaulter's property in the last resort only.

The first object on which municipal funds were to be spent was police. It would be the duty of the municipal commissioners to provide for keeping the peace and protecting property in their towns. Part VII of the Bill gave the commissioners the power of deciding what strength of police should be kept up, and it committed the management, appointment, and control of the town police to the municipal commissioners.

The next set of objects for the municipal funds were roads and streets, town-lighting, water-supply, conservancy, hospitals, vaccination, registration of births and deaths, and generally all those miscellaneous purposes to which town funds were devoted in India and elsewhere.

The Bill proposed to allow the devotion of municipal money to the furtherance of education in a town. The system of spending local rates on spread-

ing elementry and middle-class education had been adopted in England, in many parts of Europe, and in the great American Republic. On no reasonable theory of municipal government could it be contended that no portion of municipal funds ought to be spent in promoting the education of the poor. It would perhaps be said that a provision such as we proposed would check private liberality, and that the people would not subscribe so freely towards schools as they used to do; but Mr. Bernard was not sure that much weight need attach to that objection. In some of the districts close to Calcutta really considerable sums were, he was glad to say, subscribed locally for educational purposes. Where such subscriptions were large, the municipal commissioners would have less need to give support to town and rural schools; where subscriptions fell off, the commissioners could step in and save a good school which would otherwise have gone to ruin. From some parts of Bengal the educational officers reported that the committees of aided schools often changed, though active and eager at the outset. They split up into parties; they quarrelled, and thus the school fell to pieces. It might be hoped that connection with municipal committees might give to such schools the stability and permanence which they now wanted. But the object of the Bill in this matter was not merely to help on a few existing schools here and there; it was hoped that before long part of the middle-class English and vernacular schools in towns might be taken over by municipal bodies; while the provincial Government would have only to make a fixed money grant and to arrange for the inspection of such institutions. In this way a part of the public funds at present spent on higher education might gradually be diverted to helping the smaller rural townships to maintain elementary schools wherever there might be a demand for them. As this Council knew, the Bengal Government had only a limited sum of money available for educational purposes. This sum could not be increased without fresh taxation; and as the Honorable President had told the Council last session, no educational cess was contemplated. At present the Bengal Government spent about 18 lakhs of public money, plus 4 or 5 lakhs of fees and endowments, on education. Out of this total sum of 23 lakhs barely 7 lakhs were spent on elementary and rural education. Yet the people of Bengal were—perhaps more than the people of any other part of India—an agricultural people, who lived in villages rather than in cities; in parts of Bengal the people were timid and ignorant; they did not know their rights, and they could not defend themselves; they were put upon by the subordinate servants of Government, by the underlings of the zemindars, and indeed by every one with the slightest shadow of authority, in a way that almost surpassed belief. The correspondence recently published about certain illegal exactions in Orissa showed what ignorant people would submit to, and there seemed to be no general remedy for this state of things but the diffusion of some sort of education among the rural classes, so that they might know their rights and might learn self-reliance to assert them. Mr. Bernard hoped the Council would see that some extension of popular education was required in Bengal, that it might see its way to recognizing the position that unless municipalities undertook a share

in the cost of higher and middle-class schools, the provincial Government would have but little funds available for extending or helping to extend elementary rural education.

In regard to the occasional expenditure of municipal money in the relief of exceptional distress, Mr. Bernard thought that he need not say more than had been said on a previous occasion. The necessity for such outlays would, it was hoped, be rare.

The estimates for the expenditure of a municipality were to be passed by the commissioners at a meeting. If a majority of two-thirds voted in favor of any estimates, they were to be finally adopted; if they were passed by a bare majority, the commissioner of the division had power to submit the estimates for reconsideration. But after all the power of making a revision rested with the commissioners, so that in effect they would have full control over their expenditure.

The provisions relating to the registration of births and deaths had been borrowed from Act VI of 1863. It was hoped that the results of the coming censûs would give a better foundation for such registration than had heretofore existed.

Part VIII contained important provisions regarding the intervention of Government. Mr. Bernard said that, as he had submitted to the Council, the Bill left very full discretion to the municipal commissioners in every branch of municipal affairs. With some hundreds of municipalities it could not but be that here and there a municipality would shirk its work, would leave a high road passing through its midst unmended, might keep up no police or an inefficient police. Such a town would be a nuisance to the country around and to its better-ordered neighbours, and it was absolutely necessary that Government should be empowered to intervene in such cases on behalf of the public generally. The provision which proposed to enable Government to intervene in cases where there might be insufficient means of elementary education, and the section empowering the Lieutenant-Governor to direct a municipality to constitute elementary schools in their town, stood on a somewhat different footing. If education ever became general, it would no doubt be a drawback to a neighbourhood that certain ill-managed towns should remain without means of education. But Mr. Bernard would not defend those provisions on that ground only. He would submit that if the Council saw fit to recognize education as a proper object for municipal expenditure; if they allowed that municipal funds might very properly be devoted to middle-class town-schools, so that Government money might be set free for the prosecution of rural education,—if the Council could go thus far—then they might be willing to empower Government to give effect to this policy in the very rare cases of municipalities declining to aid the schools of their town.

Mr. Bernard would not trouble the Council with any reference to the municipal regulations regarding sanitary matters, conservancy, and street arrangements; hese sections had been borrowed from the Bengal and Madras Acts. Perhaps the municipal bodies of Bengal might be able, after the work-

ing of some years, to suggest emendations in these regulations; but such points could be considered at a later stage of the Bill.

Part XI of the Bill empowered the Lieutenant-Governor to constitute benches of municipal commissioners, who should sit, two or more commissioners on each bench, for the trial of petty offences within the limits of their townships. If the commissioners had leisure or inclination for such business, they would certainly confer a great benefit on their fellow-townsmen by sitting in such courts of petty session. The duty would not be arduous, and it would be honorable. It was proposed also that punchayets should have some similar powers, though it might perhaps be desirable to limit the magisterial powers of punchayets to something like the jurisdiction exercised by village headmen in the Madras Presidency. The commissioners would make their own rules as to rotation of benches, days of sitting, and such like matters.

The part relating to third class municipalities travelled over much the same ground as the Chowkeedaree Act passed two years ago by this Council; but it went further in some respects than the Chowkeedaree Act. It had been represented by local officers that, notwithstanding the proverbial moisture and heavy rainfall of Bengal, there were large tracts of country where good drinking water for some months of the year, and those the hottest months, was not to be had. These districts had recently been visited by severe fevers. The fever might or might not be connected with bad water-supply, but at any rate drinking water was an absolute necessity. The landlords were at present unwilling to provide it, and it seemed desirable to let village punchayets carry out improvements of this kind with such small balance as they might have at command after paying for village watch and ward. Power was also taken for punchayets to spend the village funds on village schools. It would be remembered that the maximum rate of taxation was one rupee a family per annum, so that a village with 300 families might raise a village fund of about Rs. 250, out of which Rs. 120 might be spent on the chowkeedars, Rs. 80 on water-supply, conservancy, and such like objects, and about Rs. 50 would be available as a grant-in-aid of village schools.

In the final part of the Bill provision was made for the commissioners making bye-laws for obviating any legal ill consequences from the occasional omission of technical forms, and for the exercise of a general control by the Lieutenant-Governor over the operations of municipalities.

Mr. Bernard had troubled the Council at much length with these remarks, and he would only add that he did not hope any sudden change or improvement would result from passing a Bill such as he had described. He had no expectation that thorough municipal self-government would at once spring into life throughout Bengal; that each place would at once elect to its town-council the best representative men of all its classes; that upright and fearless local petty session courts would at once be called into being everywhere; that municipal commissioners would straightway take an interest in and improve their town police; or that elementary schools would at once be established in every petty township. No one could possibly expect that all these good results—for he

hoped the Council would consider them to be good—would be at once everywhere apparent; but the first step towards municipal self-government had been taken many years ago in Bengal. The Bill now presented went a little further, and provided for the extension of local self-government to other public institutions. If the system of municipal self-government was a good one, it would in the end prevail over the difficulties which the condition of the country, the backwardness of some classes, and the inertia of others, placed in its way. He believed that the spread of education among the higher and middle classes made municipal self-government more practicable in Bengal than in other parts of British India, and he hoped that the present Bill, after it should have been criticised by Government officers, by municipal committees, and by the public, and after it should have been improved at the hands of the Council, might in some degree contribute towards the spread of really free municipal institutions in Bengal.

In conclusion, he would state that he did not propose to press for the reading of the Bill that day in Council, but hoped that the President would see fit that the discussion be adjourned till the next meeting, in order that hon'ble members who might take an interest in the subject might have full time to criticise its policy and its details.

His Honor the President said he thought it was the general wish and feeling of the members of this Council, and that it was generally understood at the last meeting, that we should not to-day go any further in regard to this Bill than to expound the views and ideas with which the Government laid the Bill before the Council; that it would be more agreeable to hon'ble members that the discussion should be postponed to a future date, after they had had a complete opportunity of mastering the provisions of the Bill as to-day explained. He thought he might say that the greater part of this Bill was in the nature of a consolidating Bill, and that there were large portions, very important chapters of the Bill, which had perhaps not been so fully re-considered as they might be, and that we should look to the select committee, who would be appointed to consider the Bill, to revise those chapters and, it might be, to improve them. He would also say with regard to the lengthy character of this Bill, to which the hon'ble member in charge had alluded, that he had rightly said that the whole of the Bill would not apply to all municipalities. On the contrary, His Honor thought that more than half of the clauses of the Bill were confined to what he thought he had on a former occasion described as alternative provisions. For instance, he found that about 70 or 80 clauses of the Bill dealt with the different taxes in regard to the imposition of which option was left to each municipality. A very large portion of the other clauses dealt with special provisions, the introduction of which would also be optional. The effect therefore would be that in the small municipalities, to which no such wide provisions were applied, and in the greater portion of the larger municipalities, the whole of this Bill would not be operative at any one time. The practical mode of carrying out the law would be, that when a municipality had determined to impose a certain tax, and that certain regulations should be introduced, then,

for the use of those particular municipalities which had adopted a particular system, an extract of this Bill would be prepared, which would probably be contained within a reasonable compass, and would be well within the understanding of the intelligent persons whom we might expect to obtain as municipal commissioners under the provisions of this Bill.

The voluntary clauses of the Bill gave very wide powers in regard to the different modes of taxation which municipalities might adopt, and with regard to the mode of spending money, and the various municipal bye-laws which were proposed to be introduced under the Bill; these matters might be left for the consideration of the committee; and probably His Honor might at present confine himself to noticing what he might call the compulsory clauses of the Bill. As regards the greater portion of the Bill, he might repeat that it was a consolidating and optional Bill, the details of which were dug out as it were from laws which had already received the sanction of this Council. With regard to certain points, only a limited power of compulsion was reserved to the Government.

Now he would ask, in addition to the explanation which had been given by the hon'ble member in charge, to be allowed to say one or two words in regard to these compulsory clauses. In the rare cases in which, as the hon'ble member had explained, compulsion would be necessary, it would be confined to the points to which he would now briefly advert.

The first of those points was in regard to police; now, that at all events was nothing new. We knew that in all municipalities the maintenance of the police was now compulsory; and His Honor's individual view and object in regard to the provisions of this Bill was rather to relieve municipalities and restrict the provisions which had hitherto been in force in regard to the police of municipalities than to aggravate them. Hitherto the police in all municipalities had been enrolled under Act V of 1861, and had been appointed and administered by the police authorities, and the Municipal Commissioners had very little to do with it. He confessed that he was old-fashioned enough to entertain doubts whether the chowkeydars of the old municipalities were not for certain purposes as efficient as the present regular police. He would say, so far as he was concerned, that he considered that it was entirely open to the Council and to the select committee to consider in what form the police should in future be maintained in these municipalities: whether they should wish that the police should be enrolled under Act V of 1861, or whether in certain cases they should wish to revert to the more simple chowkeydaree arrangements, which might with great facility be placed under the control of the municipal commissioners. As the hon'ble member in charge had said, it was the wish of the Government to give municipalities greater power of control over the police than they now exercised, and His Honor trusted that the committee appointed to consider the Bill would be able to put into shape clauses which would effectually carry out that intention. Therefore he would say that in respect to police it was not the intention of the Government in any mode or shape to enhance the compulsory obligations of municipalities in this respect, but on the contrary, as far as possible, to mitigate them.

The next point among the compulsory clauses was in respect to the district roads. This, he might say, seemed to him to be a necessary supplement to the District Road Cess Act. The provisions of that Act were such that municipalities of the character of the first and second class municipalities under this Bill were exempted from the provisions of that Act, that was to say, they were not to be taxed for district roads; but he thought it was quite clear that townspeople who used the district roads should contribute in some shape or other towards the expense of maintaining those roads. We were in this respect following the example found to answer in other countries: we adopted the system of providing that if municipalities were to be exempted from the general district assessment for the construction and maintenance of roads, they should be required to keep in order those portions of the district roads which ran through municipalities. He hoped it would be understood by the Council that our wish was not to compel municipalities to keep in order an unlimited number of roads, but that they might do as they liked with local roads and streets. In respect to district roads, however, which passed through municipalities, we reserved the power to see that the municipalities should keep in order those portions of these roads which passed through their towns, so that there might not be a block where these roads so passed. In that respect only we proposed to exercise compulsion, and His Honor thought that the Council would agree with him in thinking that these clauses were a merely necessary supplement to the District Road Cess Act lately passed by this Council.

The third and last subject in regard to which a certain limited compulsion was reserved in the hands of the Government was a subject which in Bengal was a very thorny subject, namely education. The hon'ble member in charge had explained the views of the Government on this point at some length, and it was not necessary that His Honor should do more than repeat and enforce what the hon'ble member had already stated. The Council were aware that the imperial grant which had been given to the local Government for certain purposes, and amongst others for the purpose of education, was limited and fixed; that it did not grow with the growth of the country and the increasing demands for education: it was a fixed and stereotyped sum, which we must find the means of extending in some way if education was to progress and increase. Our view was that in regard to the higher class of schools the demands of the country were so much increasing that they would become more and more self-supporting. With regard to those schools he would repeat what he had elsewhere said, that he was very far from wishing to discourage what was called high-class education. He might think with Professor Lobb, the Principal of the Kishnagur College, that the style of English education adopted in our schools and colleges was not in all respects the most desirable; but on the other hand His Honor thoroughly believed that we were now so committed to English education in Bengal, that it was most necessary and desirable that we should encourage it as fully as we had hitherto done as being the medium for acquiring the best knowledge. If His Honor had an unlimited command of money, there should be no limit to the grants for the

support of that high, and in some respects improved, English education which we should seek to achieve. But on the other hand, as he had told the Council, all our grants were limited, and it would not be consistent with the duty which we owed to the mass of the people of this country that we should devote a wholly disproportionate sum to the higher class of education only. Therefore, if we were to do our duty, that was to say, apportion the sums at our disposal rateably and fairly between the higher class of education and the education of the masses, then we must subtract something from the sums devoted to higher education, or by some means obtain the means of adding to our educational resources. The hon'ble member had told the Council that we would find great difficulty in imposing an educational cess. We were not prepared to come to the Council for the imposition of a general educational cess extending over the whole country. Farther, His Honor was not prepared to recommend—he might say he was entirely against—raising the fees at present demanded for education in the schools. Comparing the fees levied in our schools with the fees levied in other countries, and with due regard to the value of money, they were, he thought, quite high enough. He did not therefore wish to add to our resources by increasing the fees. At the same time, without adding to the rate of fees, he hoped that the number of scholars would increase, and that the higher class of schools would thus become more and more self-supporting, and that something would be saved in various ways. Looking to the wants of education, he thought it his duty, not rashly and harshly to take away from the grants devoted to purposes of higher education, but gradually and slowly to teach the schools which we had fostered more and more to walk alone as it were, and thus to find the means to enable us to supplement the comparatively small sums at present available for the purposes of lower education.

His Honor's hope also was that in regard to what was called higher education (though it had been said with truth that what was called higher education was in reality middle-class education) it would be found that the people of the rich and prosperous towns would be ready and willing to give some aid towards the support of schools from municipal funds. In regard to middle-class education no compulsion whatever would be required, and we did not therefore propose to take any power of compulsion under this Bill in that respect; but on the other hand he did believe that it would be a sin and a shame if, while the funds at the disposal of the Government and also municipal funds were devoted to the purposes of middle-class education, elementary education was neglected. He hoped we should find public-spirited men ready and willing to do their duty by all classes. Still there might be possible exceptions, and it would be, he repeated, a sin and a shame if both the Government and the municipal funds were devoted to one class of education, whilst all others were neglected. Therefore we proposed to ask the Council to accept the very limited compulsory provision which had been described, namely, to require the municipal commissioners to provide the means of elementary education for the people of their towns. He believed there would be very few towns in which these compulsory provisions would be required. His

Honor's experience of towns in Bengal was that *patshalas* existed almost everywhere in populous places, and that they gave a very tolerable education in the three R's. In places where these *patshalas* existed, we should exercise no compulsion, and municipalities might give aid to them or not, as they thought fit. But if there should be an entire absence of these elementary schools, then, as the Government supported the better classes of schools, which we hoped the municipalities would assist, a portion at least of the municipal funds must be devoted to the necessities of lower education.

So much for the compulsory clauses of the Bill. These three points—police, district roads, and elementary education—were the only points in respect to which we proposed to introduce these compulsory provisions, and that was the view upon which we submitted these clauses for the consideration of the Council.

He would only say one word more on the subject of third-class municipalities. They were, as the hon'ble member in charge of the Bill had explained, to a great extent a revival, in a form he hoped somewhat improved, of the chowkeydaree arrangements which this Council enacted about two years ago. There was one important difference as compared to that Act, namely, that the provision in respect to chakran or service lands was omitted. He thought that he had better tell the Council candidly what was the situation in regard to that question. His own view, and that he believed of many gentlemen who had much more practical experience on this subject than His Honor had, was that there were very great difficulties in respect to the working of the provisions of the Chowkeydaree Act regarding service lands. The working of it involved the appointment of a commission for the commutation of those lands into money payments on principles to which we might not all assent. The result of those difficulties was that he had not felt himself in a position to carry out the provisions of that Act to the degree that he should have wished to do. Therefore his hope was that the Council would consent to leave that part of the matter as a separate question, to be separately considered in connection with other questions which would arise, in order that our municipal institutions might go rapidly ahead, leaving the question of chakran lands for separate consideration. His hope was that through these provisions village communities would spring up all over the country as self-governing communities, in respect of which no compulsion would be necessary, and in respect to which we would not take powers of compulsion under this Bill. His individual wish was to decentralize as much as might be the government of these provinces, and to enable the people to make a beginning of self-government as far as possible. It had been objected to the provisions of this Bill that we perhaps proposed to allow too much latitude to municipalities: it had been said that if we gave them too much freedom, the result would be that they would do nothing at all. His Honor would say for himself that he would rather that they should do a little freely, than that they should do much under compulsion. And in respect to these small municipalities we would say "you are required under the law to do nothing more than to maintain chowkeydars, and we leave you free to provide for water-supply and other necessary things so far as you choose to do so;

we do not propose to *make* you do any of these things, but we leave them to the progress of education and enlightenment amongst you." The hope was that as education progressed and the people became enlightened, they would act of their own accord in these matters. Our plan was that we should encourage and enable the people to do little for themselves, and not *compel* them to do much at the bidding of others.

His Honor the President then adjourned the Council for a fortnight, and in doing so said that he hoped that by that time the Justices of Calcutta would make up their minds in regard to the Bill for extending their borrowing powers, and that the Council would also be prepared to make up their minds as to referring the municipal Bill to a select committee.

*Saturday, the 20th January* 1872.

**Present:**

His Honor the Lieutenant-Governor of Bengal, *presiding.*
J. Graham, Esq., *Advocate-General.*
H. L. Dampier, Esq.,
V. H. Schalch, Esq.,
S. C. Bayley, Esq.,
C. E. Bernard, Esq.,
Moulvie Abdool Luteef, Khan Bahadoor,
Baboo Digumber Mitter,
B. D. Colvin, Esq.,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
and
Rajah Joteendro Mohun Tagore, Bahadoor.

## NEW MEMBERS.

Mr. Robinson and Mr. Wyman took the oath of allegiance, and the oath that they would faithfully fulfil the duties of their office.

Rajah Joteendro Mohun Tagore, Bahadoor, made a solemn declaration of allegiance, and that he would faithfully fulfil the duties of his office.

## JUTE-WAREHOUSES AND FIRE-BRIGADE.

Mr. Bernard, in presenting the report of the Select Committee on the Bill to amend the law for the registration of jute-warehouses in Calcutta, and to provide for the establishment of an efficient fire-brigade in Calcutta and its suburbs, said that he would ask His Honor the President's permission that the report of the committee be published in the gazette. As the report was already in the hands of hon'ble members, if the President would direct its publication, he would be in a position to move at the next meeting that the

report be taken into consideration in order to the settlement of the clauses of the Bill.

THE PRESIDENT announced that the report of the committee would be published in the next issue of the gazette.

## MOFUSSIL MUNICIPALITIES.

THE order of the day for the adjourned debate on the motion that the Bill to amend and consolidate the law relating to municipalities be read in Council, having been read—

MR. BAYLEY said, in reference to the consideration of this Bill, he might say that he knew of no subject that could more reasonably claim the fullest attention of the Council, and he might congratulate the hon'ble member in charge of the Bill on the very careful and skilful way in which the intricate and numerous subjects of the Bill were dealt with, and the way in which he had succeeded in retaining all that was valuable in the existing laws and rejecting the less valuable portion, and those which it was found difficult to work in practice. The Bill was mainly a consolidating Bill, but it was a great deal more than a consolidating Bill. It attempted to deal in the first instance with two most difficult problems: it gave the germ of an elective representation to municipalities, which was perhaps the greatest boon to the people that it could be in the power of the Government to give; it also dealt with an exceedingly difficult and delicate question by taking the first step towards the compulsory education of the mass of the people. The hon'ble member, in making his statement, explained fully the constitution of municipalities under the new Bill, and he (Mr. Bayley) need hardly go further into that subject; but he would point out, in reference to the number of official members, that one-third was the maximum—that was to say, that in a municipality of ten members, three only could be officials; and in a municipality of six members, only two would be official. Although he was not prepared to say that a Magistrate with tact and discretion could not get a working majority in a municipality so constituted, he thought it was very clear that when the non-official mind was distinctly at variance and in opposition, the wishes of the official members would go to the wall. One-third as a maximum was, it was true, the maximum which we had before in the District Towns' Act of 1868; but the Town Committee under that Act was a merely consultative body; whilst under the present Act they had the power of initiation, and the power of deciding on measures laid before them. He had heard a great deal of outside criticism upon this Bill, and the general line of objection taken had been this, that with the number and variety of taxes which could or might be imposed, and the variety of purposes to which municipal funds might be devoted, there was the danger that the Government would in the course of time remove from the general revenues the burden of many things, such as the maintenance of dispensaries, hospitals, education, and relief funds, and other public works now borne by the general revenues, and would shift these burdens upon municipalities. Whilst he was prepared to state his own opinion that it was but right and proper that in the course of time the Government should shift many of these burdens from the

general revenues to local funds, he was not prepared to say that the time had come for the municipal funds to bear these burdens. To many of them, including such towns as Patna, Howrah, and Berhampore, the Government still had to give grants to supplement their police budgets, whilst the conservancy arrangements, drainage, and roads in all municipalities were in a very imperfect state. But whether or not the time had come to divert local funds towards such purposes, it was quite certain that the present Bill gave no assistance (except in the matter of education) towards the transfer, and the fears that were entertained on that point were therefore groundless. The constitution of the municipalities rendered any such transfer against the wishes of the majority impossible. On the contrary, if anything, he thought the Bill went too far the other way, inasmuch as by fixing this maximum of one-third of official members, we very seriously weakened the executive; and he feared where progress and improvement were on one side, and economy on the other, the weight of the balance in favor of economy would be too great, and improvements would be unduly retarded. While on the subject of the constitution of municipalities, he wished to ask the hon'ble member in charge of the Bill to give us some explanation of what was intended to be the scope of section 18. He found that that section vested municipal commissioners with the property in schools, the buildings, dispensaries, and other public institutions which had hitherto belonged either to the Government or to some quasi-public bodies under Government supervision, and it also provided for the endowments under which those institutions were kept up being transferred to the commissioners; but he did not see anything in the Bill which gave the Government the power of seeing that these institutions were properly kept up in the future, or devoted to the purposes for which they were intended. He did not know whether the danger was a great one, but it might happen that a negligent or cantankerous municipality would allow a school-house or dispensary to go to ruin rather than repair it, and the public, who had subscribed for it and vested it in the Government, trusting to the name and credit of Government, would be deceived; or these buildings might be put to purposes for which they were never designed. The danger did not appear to be a serious one, but still he thought it ought to be taken into consideration.

The next point in the constitution of municipalities was one of very great importance, viz. the power of the Government to frame rules for the election of commissioners. These rules still had to be framed, and as on their applicability to the purpose would depend the success or failure for many years of the scheme, too much attention could not be given to the subject. He had no doubt that whatever administrative talent was available to the Lieutenant-Governor would be made use of for this purpose; but the importance of the section in this Bill was, that it affirmed the principle that the Government was willing to give an elective franchise to municipalities; and whatever rules might be laid down, or on whatever basis the representation was to be made, it was quite clear that when the system of election of commissioners was once adopted, the Government would not be able to go back from it.

In discussing the details of the Bill, there were one or two points in regard to taxes to which he wished to refer. The first four of these taxes were in force either in Calcutta or in various municipalities in the province, and the working of them was known to most of the members of the Council. There were the tax upon houses, the tax upon carriages and horses, the tax upon trades and callings, all in force in Calcutta, and the tax upon persons according to their means, which was in force all over the mofussil; so that there was really no novelty in any of these taxes, and they did not therefore call for any special remarks. There were only two new taxes imposed under the Bill, viz. a tax upon processions and ceremonies and octroi duties. At the risk of being found guilty of irksome repetition, he would repeat that this accumulation of taxes did not mean that more than one or two of them should be imposed together by any municipalities; it was merely a choice which municipalities would have of taking what was most suited to them. But as there was much outside dread that all these taxes might be imposed at once in any municipality, he hoped by continual repetition—as water by continual dropping buries a stone—to persuade the people that not more than one or two of these taxes would be imposed at the same time. With regard to the tax on processions, that seemed to him to be a most reasonable and sensible proposition; no one who knew the way in which processions were managed in all native towns could deny that to some people they were nuisances—very necessary nuisances, but still nuisances, and further they brought together bad characters and imposed special duties upon the police, and therefore it seemed to him that those people who enjoyed this luxury should pay for it. He had some actual experience in working this license in towns in Behar, where such a tax was imposed although without any strictly legal sanction. Those who had processions did not object to pay for the license; it was merely part of an expenditure which on such occasions native custom expected to be a lavish expenditure, and the people who paid first class licenses would point to them in proof of their being people of importance and magnitude. He thought the Council would agree with him that it was obviously fair that people who liked to have the luxury of processions should pay for them.

The other new tax to which he would refer was the octroi duties. On this point he wished first to explain a misconception under which some of his native friends seemed to labor, viz. that the octroi duty and the market dues were distinct and separate taxes. The Bill by introducing the word "or" made it clear that there was only one tax, whether taken as an octroi duty properly so called, viz. a duty upon goods for consumption as they entered the town, or as a market due when they were exposed for sale. There was an alternative mode of levying the same tax and not an alternative tax. At the same time an octroi duty was not so simple a matter as it seemed to be. It was open to great objection in some points. One of these objections, that it raised the price of food, had been noticed by the member in charge of the Bill, and he need not revert further to it; there were other objections also. The great danger was of the tax being converted into a transit duty by municipalities, and he trusted he

might be allowed to read to the Council portions of a resolution of the Government of India, laying down the principle upon which octroi duties ought to be levied. The resolution was dated 16th November 1868, and was a re-publication of a previous resolution of the 14th December 1864 :

"Such duties should be restricted to articles actually consumed in the towns, and should not be imposed upon articles of general commerce, or interfere with the natural course of transit trade. The Government of India has reason to believe that these sound principles, the truth of which has been established by the prolonged experience of those countries of Europe in which octroi duties formed commonly a source of municipal revenue, have been frequently lost sight of, and that to meet the burden of an annually increasing expenditure upon police, education, or sanitary improvements, a widespread system of taxation has been introduced, injurious to interests on which the burden in a great measure falls, and standing in the way of the proper development of the commerce of the country. It is to little purpose that the imperial Government reduces or abolishes customs duties in the interests of trade, if municipalities are permitted to levy duties on articles of commerce passing through their limits."

The resolution then went on to point out that this was no chimerical or imaginary danger; that it had taken place in almost all parts of the country—Kurrachee, Agra, Bombay, Oude, and the Punjab; and it further said that Bengal was the only province to which such remarks were not applicable. It might have said that Bengal was the only province in which octroi duties had not been introduced. The resolution then went on to lay down the only principle upon which octroi duties could be considered a proper tax. The Government of India said :—

"Town duties are a tax on the consumption of the towns for whose benefit they are levied, and they should on no account be extended to any article belonging to the transit or general trade, which ought to be jealously guarded.

"If these principles are strictly acted upon, and the duties be moderate in amount, the Governor-General in Council is of opinion that there is in many parts in India nothing objectionable in this system of taxation for local purposes.

"In wealthy communities, like those of Europe, it may be admitted that the balance of argument is in favor of raising municipal revenues by direct taxation only, and leaving the local trade entirely free ; but in so poor a country as India, it will, in the judgment of the Governor-General in Council, be more commonly the best course to combine direct with indirect taxation ; for by this means alone can a sufficiently broad base be secured for raising a sufficient income without undue pressure on individuals. So long as octroi duties on grain and other articles of consumption are kept at a moderate rate, they do not injuriously affect small retail transactions with which the poorer classes are mainly concerned. That such duties are commonly far more popular in India than any direct taxation, is a strong argument in their favor, and the prejudice against them, founded on the common practice of England, should not be allowed to prevent their introduction under suitable limitations, where there is reason to think that the general feeling would be to prefer them to other forms of taxation."

He observed that the Bill provided that octroi duties should only be introduced under special rules to be laid down by the Government, and it was also specially provided that goods passing through and not entering into consumption should be exempt, and thus that they should not be converted into transit duties. He thought that with the rules to be laid down by the Government, and with the safeguards provided in the Bill, we need not have any fear that any octroi duties that might be levied in municipalities would not be based upon these sound principles. Therefore as far as the principle of an octroi duty was con-

cerned he had no objection to raise; but there was another objection taken to this tax, viz. that, except in very peculiarly circumstanced towns, the cost of collection of octroi duties would be altogether out of proportion to the amount collected. Where towns were not very large, and the consumption consequently not very great, it would never be possible to provide a collecting establishment that should not be out of proportion to the amount collected; and even in large towns if they were not compact, and if the ghâts and roads were numerous, there would in most cases be great difficulty in guarding the places of ingress and egress, and this would cause the cost of collection to be unduly large in proportion to the amount to be collected. In this very resolution the Government of India had pointed out that some cases had arisen in which the cost of collection amounted to 33 per cent. of the collections, and that the general average cost of collection was 20 per cent. In Bengal there were not many large towns, and certainly not so many as there were in the North-Western Provinces, and they were not so compact. Most of the large towns in Bengal had large river frontages, and many points of ingress and egress, and consequently there was danger of the cost of collection being unduly enhanced. It was for these reasons that the late Lieutenant-Governors Sir Cecil Beadon and Sir William Grey had objected to the introduction of octroi duties in Bengal. At the same time there were some large towns, especially in Behar, which assimilated to a certain degree to the towns in the North-Western Provinces, and in which therefore octroi duties might properly be levied. At all events, it was for the municipal commissioners of each town to consider whether their own circumstances were such as tomake the introduction of octroi duties effectual.

While on this subject, he thought he might quote still further from the resolution of the Government of India on the subject of tolls. The Bill allowed municipalities to levy tolls upon ferries, and also upon carts and all beasts of burden coming into the town. Now ferries for municipal purposes, when they were established within municipal limits, were of course not objectionable; but there were some towns in Bengal where a ferry was nothing but a means of transit from the opposite districts to the railway station. This was especially the case with the town of Patna, where the traffic of a whole province might be ferried across the river and go straight to the railway station on the river bank without making any use of the roads of the town. Yet under the Bill the municipality might levy a tax upon that traffic for the purposes of the town. What the Government of India said was this:—

"The Government of India also desires to point out that a municipal body can have no claim to take tolls on traffic entering its boundaries by roads or canals. Such imposts are merely a means of raising money from the commerce of the country for the benefit of the town in which they are levied. It may be quite legitimate for a municipality to levy a toll on a road or bridge constructed within its own limits and for the convenience of the town, but when the cost of the work has been recovered, the road or bridge should be thrown open to the public, or the toll reduced to the minimum necessary to keep the work in proper repair."

Accepting this as the principle upon which tolls ought to be levied, he thought it should be remembered that the principle of tolls on ferries in such

places should be to limit them to the amount that was requisite for covering the cost of the ferry, and should not be made a cause of gain to the town.

The next subject to which he would refer was section 133 and the other sections of the Bill in regard to police. It would be observed that the Bill gave municipal bodies very much larger control over their own police than that which they had hitherto exercised. No one could doubt that that was a very proper control. The tendency had hitherto been to make municipalities support a more expensive police than they could afford in proportion to their requirements, and he thought it was quite right that municipalities should have the main voice, under certain safeguards, as to the number and strength of their own police. But section 133 went a great deal further than this. It transferred the control of the police to municipalities, and not merely the executive control, but the appointment, punishment, suspension, and dismissal of the members of the police force from the police authorities to the municipal commissioners, or rather to a sub-committee of the commissioners. He thought there might be some legal and technical difficulty about this section in connection with Act V of 1861. All police at present enrolled in municipalities were enrolled under Act V of 1861, and formed part of the general police of Bengal. Now Act V of 1861, in section 8, vested this control distinctly in the police functionaries, that was to say, in the district superintendent and his superiors. Moreover, the same Act in section 3 said, that except as authorized under the provisions of that Act, no person, officer, or court, should be empowered to appoint, superintend, or control any police functionary. The section of this Bill as it stood no doubt did direct that municipal commissioners should be empowered by the local Government to appoint, superintend, and control the local police functionaries, and there might be a question whether the section of this Bill in its present shape could stand side by side with Act V of 1861.

[His Honor the PRESIDENT said, the hon'ble member was no doubt aware that this Council had full power to amend Act V of 1861.]

Mr. Bayley continued.—He merely threw this out as a legal point for the consideration of the Council, as the Bill did not propose to alter Act V of 1861. But beyond that he might say that he objected on principle to the position in which the district superintendent of police was placed under this section. It was clear from the subsequent sections that the district superintendent was still the executive head of the police under the magistrate. But when we considered that the commissioners themselves were a fluctuating body, that they went out by rotation from year to year, and that the sub-committee would be a still more fluctuating body; and when we considered that the whole control of the municipal police was to be taken from the district superintendent and given, not to one head but to many heads, to a body of men changing from year to year and month to month, and who from necessity had no knowledge and experience of police matters, then to expect anything like efficiency in police matters under such circumstances was to be sanguine to a most unreasonable extent. And he thought he might also point out that it was unfair to the district superintendent (who under

the magistrate was responsible for the working of the police) to expect, when all power was taken out of his hands, and when he was liable to be thwarted at every turn by an ignorant sub-committee, that he should be held responsible for the efficiency of the police. He did not mean that the commissioners should not have a voice or control in the matter, but he did think that, in regard to punishment, suspension, and dismissal, these duties should be left entirely to the district superintendent under the magistrate. He trusted that this point would be duly considered in committee and receive their attention. He would add that in some districts the municipal police was really a more important body than the district police generally, and consequently it would be a mere matter of economy that the district superintendent should be supported in his control over the police.

The next point upon which he would ask leave to address the Council was the subject of education; and here he would wish to point out a distinction which might perhaps be overlooked in the first instance. Section 113 provided that the municipal commissioners might devote a portion of their funds in aid of education in general, but did not specify any particular class of education to which these funds might be devoted. It had seemed to him that there was a possible danger that municipal commissioners in Bengal might be inclined to give their assistance to the class of schools which they particularly affected, viz. a somewhat high class of English-teaching schools. The result would be that they would take the money of the poor anddevote it to the education of the higher classes. But he saw further on that this was provided for by sections 138 and 139 of the Bill, which gave the Lieutenant-Governor power to enforce contributions from municipalities for *elementary vernacular* education. The distinction was that municipal commissioners *might* devote portion of their funds to the higher classes of schools, but *must* devote a small portion of it to elementary vernacular education. When this was put upon its proper basis, there could, he thought, be no real objection to the provision—not that he expected that his hon'ble friends opposite would not object to enforcing upon commissioners the duty of making payments on account of vernacular education; it was new and therefore it was horrible. But he would point out that in almost every civilized country this was made a charge upon local rating, and he thought it might be safely said that if our municipalities were sufficiently advanced for even the germs of self-government, we might fairly claim from them contributions for education. It was well known that the majority of municipalities were poor; that they had very small surpluses and many wants and responsibilities; and there was no doubt that in the first instance they would not be able very largely to contribute towards education. But there was no doubt that they did at present manage to contribute something to the support of dispensaries, and that many of them contributed very largely for this purpose; and it was to a great extent owing to a not very recent ruling of the Government, which allowed municipal contributions to be considered as private subscriptions, and thus enabled them to call for further assistance from the Government, that the number of dispensaries had of late very largely increased in Bengal.

If municipalities contributed towards dispensaries, then he thought there was no great change in principle in requiring them to contribute towards education. If the people would only understand how closely allied ignorance was with disease, and both with vice, he thought he might say that to provide for elementary education was really a first step towards the future diminution of the charges for police and hospitals. Although he had said that the principle was a new one, it was in one aspect not new; it was not so very different from a well-known principle which had long obtained in Bengal under the system of providing *patshalas* and *gooroo mohashoyes*. In most villages in Bengal there were *patshalas*, and *gooroo mohashoyes* maintained, nominally perhaps at the expense of the zemindars, but in reality paid for by the ryots. He had no doubt that when the novelty had worn off, and when the people became familiar with the idea, the terrors of the unknown would considerably diminish, and the same enlightened liberality which had already studded Bengal with anglo and anglo-vernacular aided schools would in its new sphere of municipalities work to the same ends, and with similar and perhaps more useful results.

There was one other point to which he would draw the attention of the Council, though it was perhaps scarcely one upon which this Council could take any effective steps,—it was in regard to the exemption of military officers residing in municipalities from taxation. The old law which was consolidated in the present Bill did not provide for this exemption, and the present Bill even did not do so; and he had no doubt that the Council would see that there was no obvious and fair reason why military officers, who shared in the benefits of municipal government, should not pay for those benefits with the rest of the people. This question was raised in 1866 in connection with the suburban municipality and the cantonments of Dum-Dum and Barrackpore, which were once under the operation of chowkeedaree unions under Act XX of 1856. The military authorities claimed exemption, but the municipalities did not see any reason to exempt them. The question was referred to the Government of India, who said that the question was a delicate and complicated one, and that it would be considered when the whole subject of residence in cantonments came under the consideration of the Government, and that in the meantime military officers should not be called upon to pay. From that time to this no orders had been issued upon the subject, and on a recent reference it was found that the matter was still deemed too complicated for decision. He did not see how the Council could do anything in this matter; but he wished to point out that in the portion of the Bill which provided for a tax upon carriages and horses, exemption was given for single chargers belonging to officers, but military residents were clearly presumed and presupposed liable along with the rest of the inhabitants to all taxes. Again, the Bill gave no power to the commissioners, or to the Government, to exempt any person or class of persons from any particular tax, save in the instance of the tax upon houses, where it gave power to exempt persons solely on the ground of poverty. Should the Government of India say that the military authorities were not to pay municipal taxes, the Council would be in a dilemma, and the Government

would be obliged to ask them for a special law to exempt them. Perhaps the hon'ble member in charge of the Bill would consider the expediency of introducing a section giving to the Government power to exempt any class of persons whom they should deem it necessary to exempt.

He had no further remarks to make in respect to the details of the Bill. He expected no doubt that we should hear many objections raised to the Bill: we should be told that it was Utopian to attempt to give even the germ of representative government to the people, who had not shown themselves fitted for such government; that it was monstrous, while the prominent wants of the country were not satisfied, to call upon them to provide for education: we should be told that we were legislating for the future; the taunt was perhaps a little stale, and he hoped that the future for which we were legislating was not a very distant future. He did not see how, consistently with our duty to our country, we could, whilst we were in India, do otherwise. It was not for us to say, "until you can swim you shall not go into the water; until you know the value of representative institutions, you shall not have them; until you know the benefits of education, you shall not be given the means of education." If we were not to be in the *van*, if we were not to *lead* the people in what we believed to be the path of progress, he knew not what other duty we had. It was surely not for us in this country to sink to what a recent writer speaks of as "administrative nihilism," and to confine our attention solely to maintaining the distinctions between *meum* and *tuum*. The foundation stone of municipal institutions in Bengal was laid by Sir Cecil Beadon in 1864, and during the whole of his Lieutenant-Governorship he supervised them with great personal interest and care. He (Mr. Bayley) looked upon this Bill as the natural and necessary sequel to the legislation of 1864. He had frequently heard it said that the work which was done then was a sham, and he could quite understand how, from an English point of view, and when compared with English institutions, it would appear to be a sham. To his view it was not so. Such municipalities as we had, and such municipalities as we should under this Bill have, were no doubt most imperfectly developed, but they were adapted to a very imperfect age and state of society. It appeared to him that it would be as reasonable to say that the fleets of our ancestors were a sham because they were not iron-clad, as it was to say that these municipal institutions, though adapted to the special circumstances of the country, were a sham, because they were not equal to English institutions. It appeared to him that they were capable of expansion, development, and growth, and he had no doubt that we should see that they would develop, and be most useful and important means of national education; and he knew of nothing in the whole scope of public administration that could be compared in its importance as an instrument of national education with local self-government, and for this local self-government the Bill provided, he believed, a very satisfactory and hopeful foundation. He trusted that this Council would affirm that principle by referring the Bill to a select committee.

Rajah Joteendro Mohun Tagore said, as far as he had been able to master the details of this Bill, he did not think there was anything to which exception

could be taken as regards the consolidation of the different Municipal Acts now in operation. He confessed, however, that he did not quite see the necessity of this consolidation, unless the object were to impose new taxes and throw new responsibilities upon the people. But this was what struck him to be the most objectionable feature of the Bill. Already there was an outcry throughout the country against the excessive pressure of taxation; tax after tax was being imposed upon the people in one shape or another, (it mattered not whether imperial or local), and the minds of the people had been thrown into a state of uncertainty and alarm. He would appeal to the official members of the Council to bear him out in these observations. The days of the pagoda tree now no longer existed, and stubborn facts had proved to the world the exceedingly poor condition of the people of this country. It was only the other day that a respectable journal published an abstract of the income tax statistics of the Lower Provinces, which showed that only 43 in every 10,000 persons could be assessed under schedule A of the Act. Allowing sufficient margin for the over-assessment of the income tax officials, the poverty of the population generally was quite patent. He submitted whether under these circumstances new burdens were not likely to create a deal of dissatisfaction.

The hon'ble member in charge of the Bill had said that two only out of the seven forms of taxation provided in the Bill were new. But he begged to draw attention to the fact that the provision for the procession tax itself included another tax, viz. a tax upon ceremonies not exclusively religious, but which had no connection whatever with processions. Tolls upon vehicles and beasts of burden have been hitherto levied in certain places where roads had been constructed by the ferry fund committees, but as far as he was aware he knew of no instance in which they had been collected within any municipal limit. The license tax upon trades and professions was known only to the metropolis of Calcutta, and would be entirely new to all the mofussil municipalities. Of the other taxes it should be remembered that some only were applicable to one class of municipalities and some to another; but under the Bill as it stood all these taxes might, if necessary, be imposed in any one place. True it was that the taxes were not to be compulsory, but with so many new obligations upon the municipalities there must of necessity be new taxes, and the only choice the people would have in the matter would be to submit to just as many taxes as might be necessary to meet the increased demands on the municipality. Our nursery tales related that in former days persons convicted of capital offences were sometimes generously offered their choice of the mode of death they liked to die; death they certainly had to meet, but they had the consolation of selecting the way in which they preferred to be killed; the position of the rate-payers under this Bill would be something similar. Taxed they must be, and that heavily too, but they would have the satisfaction of selecting the sort of burden they would like to be pressed with. It might be urged that as the Commissioners were to be elected, and thus be representatives of the people, they would accept only such burdens as would be suited to their

capacities and conditions. He was not sure how far, with rare exceptions, the population of mofussil towns were fitted for elective municipalities; but however that might be, he was humbly of opinion that as long as the Magistrate would be the Chairman of the Commissioners, the other Commissioners must necessarily sink into the position of "*jo hookum* members;" for who that held any subordinate office under Government, or owned any property in the mofussil, would think of incurring the displeasure of the *hakim?*

Besides, power was reserved to the Government to remove any Commissioner for neglect of duty, and nothing would be easier for a Magistrate than to report the name of any Commissioner for removal who might happen to oppose the Magistrates's scheme of taxation. Moreover, power was given by the Bill to the Government to compel Commissioners to do certain things. The hon'ble the President had on a former occasion observed that this power would be confined to three things, viz. education, the maintenance of roads, and police. With all deference to the views expressed by His Honor, he (Rajah Jotcendro Mohun Tagore) would take leave to draw the attention of the Council to the latter portion of section 137 of the Bill, which ran as follows:—

"And the Lieutenant-Governor may, on the report of such committee, call upon the Commissioners, by requisition in writing signed by him and published in the *Calcutta Gazette*, to raise the necessary funds and carry out *the purposes* of this Act, and thereupon if the Commissioners neglect for the space of three months then next ensuing to comply with the said requisition, the Lieutenant-Governor may direct the Magistrate to raise the necessary funds under the provisions of this Act, and *carry out in all respects the purposes thereof.*"

He spoke under correction, but it seemed to him—

[His Honor the President explained that it appeared to him that section 137 was complete in itself, and that the words read out referred specially to that section and not to the whole Act.]

Rajah Joteendro Mohun Tagore continued.—However that might be, under the circumstances mentioned he must confess that he thought that the elective system would be nothing but in name, and that the real power would be in the hands of the Magistrates. He was free to confess that these officials generally had nothing but the good of the country at heart: but their stay in any one station being for a limited period only, with an excusable human feeling, they were anxious to make their short administration as brilliant as might be, and leave their impress on the locality. Necessarily they were anxious to carry out their English notions of municipalities with high pressure speed. If the law therefore afforded such facilities of taxation as were given by this Bill, tax after tax would be imposed upon the people, and their sufferings would have no end.

As to third class municipalities he did not quite understand how the question of chakran lands could be separated. He presumed that it was neither the intention of the Government to make the people maintain a double set of men for the same police duties, nor to release the owners of chakran from their obligations, and make them a gift of the lands rent-free. He was not in full possession of the circumstances under which the Government intended to

proceed in this matter, and he was not therefore in a competent position to enable him to discuss the matter further at present.

With reference to the subject of education, he begged to bring to the notice of the Council the fact that the present funds of municipalities could never be found adequate to bear the additional charge for education. With this new obligation therefore there must of necessity be a new tax, although it might not be called an educational cess. The effect, however, would be the same, whether the tax was taken in the name of an educational cess or in any other name. His Honor the President had justly observed that there was hardly a village in Bengal in which there was not a *patshala*. He (Rajah Jotcendro Mohun Tagore) would go a step further and say that there was hardly any considerable village in which there were not two or three *patshalas*, which proved that the voluntary system of education was working well. There were of course some exceptional places in which no such institution as a *patshala* existed, but the presumption in such cases was that the people in such places being either actual cultivators or laborers could not spare their children for the school, and consequently the want of primary education was not felt there, and that even if *patshalas* were established in those places, little or no advantage would be taken of the benefits they would afford unless a system of compulsory education were introduced by the Government. The effect therefore of having such compulsory provisions in the Bill would be to empower overzealous Magistrates to establish *patshalas* where they would be absolutely useless, or to raise existing *patshalas* to a standard far beyond the means and requirements of the people.

Mr. Robinson said that this Bill for the consolidation of the municipal law was one of the most important measures that had ever been laid before the Council. Whereas municipalities were undoubtedly the true foundation of free institutions, and this Bill would be the most important and comprehensive step towards giving the people of this country something in the form of self-government, to which legislation had been tending since the government was taken over by the Crown, he thought that in considering this Bill we ought to dismiss entirely from our minds any idea that we were introducing any boon of western civilization to the people of this country, for the real fact was that the people of India were perfectly well acquainted with municipal institutions,—that they lived under social institutions, bearing all the force and effect of municipalities, hundreds of years before the British came to India. On a former occasion he had remarked that it would be highly desirable, in connection with the subject of taxation, that the opinions of the bulk of the people should be made known to the Council. His Honor the President then observed that it would be extremely desirable that that should be done, but that the masses of the people had no representatives in this Council, and that there was much difficulty in ascertaining what their real sentiments were. He (Mr. Robinson) certainly did not represent the people of the country, and he was not aware that even the native gentlemen who sat in this Council did so. Considering that this Bill related to a subject with which the people of this country were thoroughly acquainted, he thought it would be most desirable that every possible

step should be taken by the Government—and he had no doubt that it was in the power of the Government to take such steps—to ascertain the views of as large a portion of the native community as possible, especially in regard to the different forms of taxation to be imposed by the Bill. He had himself seen a strong illustration of what the native population could do in carrying out many of the objects of municipal institutions. In the city of Hattras in the North-Western Provinces there was not a European resident, either official or non-official, and there was no official from between 25 to 30 miles of the place. But under the supervision of native gentlemen in the place, that city was as perfect and well-worked in its arrangements as any place he had ever seen in India; it was clean, well-ordered, and well-kept in every possible way. It seemed to him that we must assume that if the people of the North-Western Provinces could accomplish such a result as that, it must be equally possible for the people of Bengal, who, as a rule, were possessed of higher intelligence, to produce similar results, and to be able to give most important advice as to how those results could best be arrived at.

The subject upon which a great deal had been said was the variety of the forms of taxation. His Honor the President had described them as a choice of a number of good things. He (Mr. Robinson) was inclined to think that these good things were really too many. He would not at present enter into details; that would be done when the Council came to consider the clauses of the Bill; but he could not see how this variety of taxes could be levied without their becoming cumulative. The hon'ble member in charge of the Bill, in alluding to this subject, had said that in a place in which one or two of these taxes were applicable, the others would not be resorted to. He (Mr. Robinson) really could not follow the hon'ble member's argument, and he thought that, on consideration, the hon'ble member would find that that could not be meant. It was very true that, as a rule, the greater number of these cumulative taxes would fall only upon the richer people in municipalities, but still, even in regard to them, it would not be fair or reasonable that they should pay in excess of what their position demanded. Another objection which struck him with regard to this great variety of taxation was this, that municipalities would be guided by different ideas and different views, and it seemed to him that it would be impossible to avoid the effect of one place being made very much dearer or very much cheaper than another, and the people would naturally flock to cities under municipal institutions where these charges were light, and would naturally leave those cities where the municipal charges were heavier, and there might be constantly considerable and very disturbing fluctuations of the population moving about the country, and disarranging the plans of many municipalities, especially in upsetting their estimates of income.

The only special tax to which he would now allude was the octroi duty. That he considered in every way to be a most objectionable tax: in fact, he could not see how to get over the physical difficulty of collecting it in any way except in walled towns having gates of entrance. He had been lately through several walled cities in Italy where this tax was collected by guards stationed at

the gates, which he believed to be the only way in which it could be collected, but it seemed to him that it would be impracticable in the straggling, open towns in Bengal to effectively collect the tax at all at a cost that could make it remunerative to municipalities. In addition to that was the difficulty pointed out by the hon'ble member who opened the debate (Mr. Bayley), of avoiding this tax becoming a transit duty. He thought that was a matter for grave consideration, and he entirely agreed with the hon'ble member in all the remarks which he made upon that subject.

One other remark which he would make, and which was not perhaps exactly in connection with the consideration of the present Bill, was the proposal that under certain restrictions the Commissioners should be made elective. He thought it was highly desirable that the elective principle should be carried out as far as possible; but he would suggest that probably it would be desirable that that principle should first be tried in Calcutta, where it did not exist. He thought it would be very advisable to try it here, where municipal institutions had been in existence for some years, and the result would be a safe guide in extending it to municipalities in the mofussil. He felt strongly that this was a Bill of great importance, and he was sure that all the members of the Council would give it their most earnest consideration. He hoped that if the discussion on this Bill was taken in the freest and fullest manner possible, and if every information was sought for from the people who would be affected in their social life by the institutions proposed to be established under the Bill, and fair attention given to those opinions, the Bill would be passed in a form which, while providing for the prosperity of the people under the Government of Bengal in the future, would at the same time avoid creating dissatisfaction and irritation in the present, an object he considered most especially to be desired.

Baboo Digumber Mitter said, he fully appreciated the good intentions and the liberal views which had inspired some of the leading provisions of the proposed measure, and however widely opinions might differ as to their adaptability to this country, they afforded at any rate an assurance of the generous and enlightened policy which it was the wish of the Government to pursue in the administration of these provinces. There could be no question that it would materially forward the cause of good government if the people, underwell-organized institutions, undertook the management of their own local affairs; but the question still remained, were the conditions met with in this country such as to encourage a reasonable hope of these popular institutions being successfully were introduced here? It was needless to inquire whether or not such institutions congenial to the genius of the aryan race, to which it was said it was our privilege to belong, or whether they were at any time in existence in this country. It was sufficient for our present purpose to know that indigenous institutions of the kind, even in a qualified form, were nowhere to be found at the present day, at any rate in Bengal, and he must confess, however reluctantly, that the country was neither politically, socially, morally, or intellectually prepared for their reception.

Apart from other considerations, upon which he need not dwell, he would only observe that the very essence of such institutions, that from which they drew their vitality, and upon which their successful working was mainly dependant, was totally wanting here; he meant public spirit, viz. that enlightened idea of self-interest which prompted men under certain political conditions to subordinate individual to public good, and to submit cheerfully to self-sacrifice so that the well-being of the community might be promoted. There was no want of private charity, no want of active sympathy, of a strong impulse, to relieve the sufferings of others; but such a thing as a well-directed confederation for the advancement of the common interests of the community was utterly unknown. The only object for which such an union was at present possible, was when a Barwaree Poojah was to be celebrated in the village, or when a man, who had rendered himself obnoxious by his heterodox opinions in religion, was to be outcasted. It would, he hoped, be hardly contended that such a state of social disintegration was at all congenial to the healthy development of popular institutions, which, wherever they existed, were found to be the out-come, and not, as he humbly believed, the precursor of national self-government, which it was His Honor's earnest wish to foster among the people of the country. It was not to be wondered at, therefore, that the attempt hitherto made to naturalize these institutions in this country had not resulted in success. Instead of gradually attaining to the dignity and usefulness of popular institutions, whether for the impartial and judicious levy of taxes, or for the equitable application of the same, they had for all practical purposes degenerated into organizations for investing one man with irresponsible power in respect of both, and the power, he was sorry to say, was seldom exercised with a sparing hand. It was a general complaint that the taxes the rate-payers had to pay were heavy: nor were they impartially levied; and instances were not quite unknown of the pressure of the municipal taxes having driven men to desert their ancestral homes and hearths, and expatriate themselves to places where these institutions were yet unknown. Neither were the purposes to which the municipal funds were applied such as benefited the general body of rate-payers, nor such as they would sanction if they had any will of their own in the matter. The real truth was that the non-official native members could not, for many reasons, exercise a salutary check over the action of the chief executive officer of the municipality, nor would they individually or collectively venture to oppose him in any of his pet measures at the possible risk of incurring his displeasure. There were, he admitted, exceptions, and honorable ones too, but nevertheless they were exceptions which only went to prove the rule The only check under the circumstances to extravagance, a weakness to which we were all more or less liable when disbursing money which did not belong to us and for which we were not accountable, was that which was imposed by the forbearance of the executive himself. Such was his (Baboo Digumber Mitter's) experience of the municipal institutions as they had been found on trial in this country; and holding the causes of their failure, as already stated, to be those which were not easily removable by legislation, he was far from sanguine of happier results attending the improvement so liberally

conceived and earnestly contemplated to be introduced in their constitution. He was afraid that his views on the subject would not be sympathized with by some of his educated countrymen, but he regretted he could not, for the sake of an idea, close his ears to the loud complaints which these so-called popular institutions had already evoked; and without meaning that these institutions should be at once swept away, he would bring them under more efficient control than could be exercised by the non-official commissioners, under such control as he believed and he trusted to a certain extent would be met by section 205 of the Bill. At any rate, he felt considerable reluctance in supporting the further extension of these institutions, especially to rural villages, as he believed was contemplated under part XII of the Bill.

As for the new sources of taxation proposed in the Bill, their propriety or otherwise could not, he humbly thought, be fairly considered without at the same time taking into consideration the nature of the obligations which the Bill sought to impose upon the municipality. If the obligations were such as should justly devolve upon them, or such as, under existing circumstances, they were imperatively called upon to undertake in the interest of the rate-payers, the municipality must anyhow find means to discharge those obligations, and it would merely be a question for consideration whether, in view of the agency available, and other circumstances peculiar to particular localities, some of the proposed new taxes would not be infinitely more harassing and vexatiously burdensome to the rate-payers than an augmentation of the present direct taxes, and whether the levy of such taxes would not entail an expenditure in establishment quite disproportionate to their probable gross yield. He would, however, take this opportunity of respectfully objecting to taxing general income for municipal purposes. He admitted that the provision to tax according to circumstances was not quite an innovation in this Bill, but it had never before taken that definite and practical shape which he believed section 32 of the Bill was designed to give to it. As regarded the obligations which were recommended to be imposed upon the municipality, viewing them with the light thrown upon them by His Honor at the last meeting of the Council, viz. that all of them were not compulsory, he should have had little to say in respect of them if he thought they would really be self-imposed, or, in other words, if the bodies to whom the choice of imposing them was to be delegated had any of the essential elements of self-government in their composition, or if he thought that the same could be infused into them by means of legislation. But, as he believed, the choice of their imposition would rest with some others than the rate-payers, and as after all the municipalities, as had been so aptly described by the Hon'ble Mr. Strachey in the other council, were but a branch of the Government, it was on that account of the utmost importance that the principles under-lying those obligations should be carefully examined before they acquired the force of law, and that task could not be better performed than by the select committee to whom the Bill might be referred.

As for education, however, he was glad to be able to endorse fully all that had been said on the subject by His Honor and the hon'ble member in charge

of the Bill at the last meeting of the Council and on other previous occasions. There could be no question that every child had a right to receive an education suited to his condition in life, and if his parents were unable to give it to him, he had an undoubted claim upon the State for the same; and he (Baboo Digumber Mitter) did not know that a better scheme could have been devised to supplement the imperial grant, which was admittedly insufficient for the purpose, than the one recommended in this Bill, which, while obviating the necessity of a special cess for the purpose, enunciated the only practical and rational mode of disseminating and developing mass education in this country, viz. by means of the gradual application of the grant-in-aid system. Mass education was no doubt desirable alike in the interests of good government and of humanity, but it was equally desirable that a sudden disruption should not take place in the existing social and industrial economy of the country, by its being quickened by a sort of hot-house treatment, or pursued under a system of tuition which might inspire a distaste for the specially arduous life to which at least three-fourths of the population of the country were destined; and towards that end he fully agreed with His Honor that the indigenous *patshala*, or education by a *goroo mohashoy*, which until lately was the only education available to the middle classes in all the mofussil towns, was far preferable to the system of mass education inaugurated by the education department, which, besides being expensive, aimed at imparting a kind of education evidently inconsistent with a life of drudgery, which, as he had already observed, three-fourths of the population must inevitably lead. But it might be said that the scheme of mass education propounded in the Bill would be emasculated by excluding the rural villages, as he had suggested, from its operation. If he had understood part XII of the Bill aright, he believed it contemplated the extension of municipal government to villages which were now covered by the Chowkeedaree Act passed last year by this Council. If so, he thought that for purposes of fostering the growth of indigenous *patshalas* in villages where the same might be needed, it would be enough to revise that Act to the extent of investing the punchayets of such villages with the further power of raising a sum sufficient to meet the educational demands of the village. This sum, supplemented by a like amount from the grant-in-aid fund, would soon bring into existence a number of cheap *patshalas*, enough to meet the present educational requirements of the country, without at the same time proving such a drain on the imperial grant for education as it might find it impossible to meet. These village *patshalas* might be placed under the supervision of the punchayets and the sub-divisional officers, as the municipal *patshalas* were designed to be placed under that of the magistrate and the municipal commissioners.

In regard to the only other new obligation imposed on the municipality, viz. the support or relief of the poor, he was afraid that the country would regard it as the thin end of the wedge towards the general introduction of a "poor-rate." He did not for a moment deny that the really helpless had a claim for support upon the community to which he belonged, but the social system of the country, to which the utmost respect was yet paid, was such

that legislative interference in that direction was scarcely called for. There were few Hindoos or Mahomedans in the country who would refuse to give shelter and food to a helpless relative, however distantly connected by blood, and it was to this happy feature in our social fabric that was mainly due the fact that death by starvation was seldom or never heard of in this country except in times of widespread and general distress, such as could only be caused by famine. He humbly questioned therefore the wisdom of the policy which sought to substitute an expensive, and of necessity a complicated, machinery of relief under the authority of law for one which was already in operation, and was working satisfactorily, on a self-acting principle.

MOULVY ABDOOL LUTEEF said he had listened with pleasure, and studied he hoped with profit, the speeches made at several meetings of the Council by the hon'ble member in charge of the Bill, and he must say that seldom had a measure, involving the delicate application of so many important principles of local finance and taxation to the necessities of a province so little advanced in municipal experience as Bengal, been explained with such clearness and precision. He had also been mindful of the opinions expressed outside of this Council, and he could not but regard it as a fortunate circumstance that public opinion was sufficiently advanced to be able to appreciate the benefits of so important a measure as that which was now about to be extended to the country. If he might venture on a suggestion at this stage of the Bill, he would propose that the Bill which gave a consolidated municipal law to all places in the mofussil to which the Government might determine to extend it, and left out the Presidency town of Calcutta for reasons which were self-evident, should also leave out the municipality of the suburbs of the metropolis, which had a municipal law of its own. That law was quite sufficient for all practical purposes, and only required some amendment to make it complete, for which a short Act would answer far better than bringing the suburbs within the range of this municipal law. In fact it would be difficult to work such a law in the suburban municipality, the administration of which was but little different from that which prevailed in Calcutta. The police of the suburbs was controlled from the police office in Lall Bazar. There was a very large European and wealthy and intelligent native population in the suburbs, whose wants and requirements of municipal government were far ahead in such matters of those of the people in the places to which the Bill under discussion might be held to apply. He would therefore strongly recommend the insertion of a special clause exempting the suburbs of Calcutta from the operation of this Bill.

As regards the taxes proposed, there was, in his opinion, very little reasonable objection to the number included in the Bill, since it was optional with municipalities to select whichever of them they liked; but he must say that in his opinion the octroi was not at all suitable to the circumstances of towns in Bengal.

MR. WYMAN said he had no doubt that not only this Council, but the general public, would be greatly gratified at the introduction of this Bill, which proposed not only to consolidate and improve the various laws relating to municipalities throughout Bengal, but also to introduce the system of election

of the Bill at the last meeting of the Council and on other previous occasions. There could be no question that every child had a right to receive an education suited to his condition in life, and if his parents were unable to give it to him, he had an undoubted claim upon the State for the same; and he (Baboo Digumber Mitter) did not know that a better scheme could have been devised to supplement the imperial grant, which was admittedly insufficient for the purpose, than the one recommended in this Bill, which, while obviating the necessity of a special cess for the purpose, enunciated the only practical and rational mode of disseminating and developing mass education in this country, viz. by means of the gradual application of the grant-in-aid system. Mass education was no doubt desirable alike in the interests of good government and of humanity, but it was equally desirable that a sudden disruption should not take place in the existing social and industrial economy of the country, by its being quickened by a sort of hot-house treatment, or pursued under a system of tuition which might inspire a distaste for the specially arduous life to which at least three-fourths of the population of the country were destined; and towards that end he fully agreed with His Honor that the indigenous *patshala*, or education by a *goroo mohashoy*, which until lately was the only education available to the middle classes in all the mofussil towns, was far preferable to the system of mass education inaugurated by the education department, which, besides being expensive, aimed at imparting a kind of education evidently inconsistent with a life of drudgery, which, as he had already observed, three-fourths of the population must inevitably lead. But it might be said that the scheme of mass education propounded in the Bill would be emasculated by excluding the rural villages, as he had suggested, from its operation. If he had understood part XII of the Bill aright, he believed it contemplated the extension of municipal government to villages which were now covered by the Chowkeedaree Act passed last year by this Council. If so, he thought that for purposes of fostering the growth of indigenous *patshalas* in villages where the same might be needed, it would be enough to revise that Act to the extent of investing the punchayets of such villages with the further power of raising a sum sufficient to meet the educational demands of the village. This sum, supplemented by a like amount from the grant-in-aid fund, would soon bring into existence a number of cheap *patshalas*, enough to meet the present educational requirements of the country, without at the same time proving such a drain on the imperial grant for education as it might find it impossible to meet. These village *patshalas* might be placed under the supervision of the punchayets and the sub-divisional officers, as the municipal *patshalas* were designed to be placed under that of the magistrate and the municipal commissioners.

In regard to the only other new obligation imposed on the municipality, viz. the support or relief of the poor, he was afraid that the country would regard it as the thin end of the wedge towards the general introduction of a "poor-rate." He did not for a moment deny that the really helpless had a claim for support upon the community to which he belonged, but the social system of the country, to which the utmost respect was yet paid, was such

that legislative interference in that direction was scarcely called for. There were few Hindoos or Mahomedans in the country who would refuse to give shelter and food to a helpless relative, however distantly connected by blood, and it was to this happy feature in our social fabric that was mainly due the fact that death by starvation was seldom or never heard of in this country except in times of widespread and general distress, such as could only be caused by famine. He humbly questioned therefore the wisdom of the policy which sought to substitute an expensive, and of necessity a complicated, machinery of relief under the authority of law for one which was already in operation, and was working satisfactorily, on a self-acting principle.

MOULVY ABDOOL LUTEEF said he had listened with pleasure, and studied he hoped with profit, the speeches made at several meetings of the Council by the hon'ble member in charge of the Bill, and he must say that seldom had a measure, involving the delicate application of so many important principles of local finance and taxation to the necessities of a province so little advanced in municipal experience as Bengal, been explained with such clearness and precision. He had also been mindful of the opinions expressed outside of this Council, and he could not but regard it as a fortunate circumstance that public opinion was sufficiently advanced to be able to appreciate the benefits of so important a measure as that which was now about to be extended to the country. If he might venture on a suggestion at this stage of the Bill, he would propose that the Bill which gave a consolidated municipal law to all places in the mofussil to which the Government might determine to extend it, and left out the Presidency town of Calcutta for reasons which were self-evident, should also leave out the municipality of the suburbs of the metropolis, which had a municipal law of its own. That law was quite sufficient for all practical purposes, and only required some amendment to make it complete, for which a short Act would answer far better than bringing the suburbs within the range of this municipal law. In fact it would be difficult to work such a law in the suburban municipality, the administration of which was but little different from that which prevailed in Calcutta. The police of the suburbs was controlled from the police office in Lall Bazar. There was a very large European and wealthy and intelligent native population in the suburbs, whose wants and requirements of municipal government were far ahead in such matters of those of the people in the places to which the Bill under discussion might be held to apply. He would therefore strongly recommend the insertion of a special clause exempting the suburbs of Calcutta from the operation of this Bill.

As regards the taxes proposed, there was, in his opinion, very little reasonable objection to the number included in the Bill, since it was optional with municipalities to select whichever of them they liked; but he must say that in his opinion the octroi was not at all suitable to the circumstances of towns in Bengal.

MR. WYMAN said he had no doubt that not only this Council, but the general public, would be greatly gratified at the introduction of this Bill, which proposed not only to consolidate and improve the various laws relating to municipalities throughout Bengal, but also to introduce the system of election

of municipal commissioners. The hon'ble member opposite (Mr. Robinson) had remarked that there was nothing novel in the features which this Bill proposed to introduce, as municipal institutions had existed in a great state of perfection hundreds of years before we came to this country. There was no doubt that municipal institutions did exist in Bengal hundreds of years ago, but it was also the fact that those institutions did not exist now. Therefore the alarm with which this Bill had been received by certain classes was to a certain extent understandable, inasmuch as it contained novel features and proposed to extend municipal taxation. That the result of the Bill would be to increase taxation in the small towns, he had very little doubt, but seeing that a safeguard was allowed in the shape of the liberal provision allowing two-thirds of the commissioners to be elected, he thought that that objection was almost met. As civilization and intelligence increased, the desire to expend more money, and therefore to raise more taxes among municipalities, would undoubtedly take place, and the fear which had been expressed that this already heavily-taxed province would be still further called upon to contribute to local improvements, would only, he feared, be too surely realized. It seemed to him that there was no escaping such a result, and therefore the only plan was to protect the interests of the people by giving them a large voice in the government of municipal affairs.

He had not had time to study the details of the Bill in the manner in which he had wished to have done, but he trusted to be able to do so afterwards. The only point to which he wished to refer, was the compulsory power vested in the Lieutenant-Governor in respect to police, roads and education. In regard to the first two points, His Honor the president had so thoroughly explained the absolute necessity of roads and police—the necessity of the one being kept in efficient order, and of the other being maintained at its proper strength for the protection of life and property—that nothing more could be said upon the subject. But he found himself in a very difficult position when he came to consider the next matter, namely education; for, while his feeling was doubtful as to the desirability of having a compulsory provision in respect to the education of a people who were so far behind their wants and civilization as the people of Bengal were, and while he felt—if he might so term it—the danger of those provisions being carried too far, he also felt most strongly the necessity for the education of the masses. He knew that he would be met by the argument that England had very recently introduced what was considered the wise and necessary measure of compulsory education of the people; but it had taken a very long time to form that opinion, and it was only to-day, as it were, that opinion in England had become strong enough to pass such a measure of compulsory education, and the comparison between the intelligent status of the people of England and the very poor of the province of Bengal could hardly be said to be a fair one, and in fact the comparison could hardly be made at all. Therefore he felt somewhat doubtful whether we were justified in respect to the adoption of compulsory education of the masses in this country, who perhaps did not need it, in relation to their peculiar condition, quite so urgently as was supposed.

But he really could not affirm the contrary principle, because he felt that education would in the end conduce to the diminution of taxation by decreasing crime and increasing commercial prosperity. He merely threw out that remark as it occurred to him, but he felt certain that the wisdom of this Council would affirm such principle in such a way as should not only be an honor to itself, but also truly benefit the great masses for whom this legislation was being provided.

MR. DAMPIER said he would first take up the remarks which had been made by the hon'ble member who had just sat down (Mr. Wyman) as he was dealing with what no doubt was the prominent point of interest in the Bill, viz. the compulsory power which the Bill proposed to give to the Lieutenant-Governor as regards obliging municipalities to contribute towards elementary education; now he (Mr. Dampier) would wish it to be understood that he was speaking entirely for himself, for he had not been put in possession of His Honor the President's views upon this subject, and therefore spoke entirely under correction of the hon'ble member in charge of the Bill, and rather in the shape of asking for information. On one point he must begin by differing entirely from the opinions of the hon'ble member who had just sat down; he would start from the point that in his opinion there was not the slightest doubt that it was our duty to extend elementary education of the lowest form as widely as we possibly could do amongst the masses. It was no doubt the duty of the public in general, as distinguished from the Government, to do all in their power and to act up to their responsibilities in this matter. It appeared to him that the working of this compulsory clause would be somewhat in this way. If within the boundaries of a municipality the private arrangements of the inhabitants were such as to show that they were acting up to their responsibilities; if they raised subscriptions, if they got grants-in-aid from the Government under the rules passed for that purpose, to such an extent as, reasonably speaking, to place the benefits of elementary education within the reach of the poor of the municipality, then there would be no reason for the interference of the Government, nor would it be necessary for the municipality even to interfere. This was the best and most perfect form in which education could be given. But if private persons were backward and did not fulfil their responsibilities, and means were not provided for educating the lower classes within a municipality, then came in the action of a municipality. The members of it would act probably at first by exerting their personal influence; they would urge upon the landholders and influential people of the place who were in a position to do something, that it was a shame to them as inhabitants of the place that they did not provide sufficient funds for this purpose; and that if they failed to do so, the municipality would have to come in and supplement the funds by additional taxation. Then as he understood the question (but still not being thoroughly acquainted with what had passed within the last two years he spoke under correction) if all endeavours to raise sufficient private subscriptions failed, contributions might be given by the municipalities to supplement private subscriptions. Such contributions had hitherto been treated as private subscriptions towards making up the proportion

that was necessary to the obtaining of grants-in-aid from the Government. He assumed that it was intended that that principle should continue, that municipalities would supplement private subscriptions, and that to the sums thus made up, where grants-in-aid were necessary, grants-in-aid would be added. That was his idea of what would be the working of these provisions; and if that were so, he could not understand that they could be objected to, except by starting from the position that it was not our business to educate the people. If the masses of the people were to be educated, then surely it was within towns more than any where else that this education should be given; towns were the nuclei from which education as well as all civilization should spread.

The next point to which he would refer was a remark which had fallen from the hon'ble member who opened the debate (Mr. Bayley), which was that this Bill contained the germ of election of members of municipalities. He (Mr. Dampier) had no ambition to be considered a reformer, in the sense in which the term was ordinarily used, but he could not allow this remark to pass over without asking permission to read to the Council a few remarks which were made in this Council in introducing the District Towns' Act of 1868. He then said:—

"By the present law, and generally by section 21 of this Bill, the magistrate appointed the members of the punchayet; but with the view of keeping pace with the times, it was provided that it should be lawful for the Government, if it should see fit, to prescribe rules for the appointment of members of the punchayet by the election of the tax-payers or of members of the punchayet, or in any other manner than by the nomination of the magistrate; that was to say, it was hoped that when the Government saw a town sufficiently advanced to elect one or two or more members of its own punchayet, it should pass rules, taking away from the magistrate the power of nomination, and conferring the power of election on the tax-payers."

Then in presenting to the Council the report of the select committee, it had been said:—

"Sections had been introduced as to the constitution of these local committees, enabling the Government to lay down different rules for the appointment of members of the committees in different towns according to the stage of advancement which each town might have reached. Unless any other mode of appointment were prescribed, the magistrate, with the sanction of the commissioner of the division, was to nominate the members of the committee; but provision was made for the election of the members when the Government had reason to believe that the town was far enough advanced."

That section was reported in the proceedings as having been passed only with verbal amendments, but the form in which it had been passed obliged him to read these remarks of his as explanatory of the intention of the Council. The section was passed as the 24th section of Act VI of 1868, and it ran—

"The members of every tow ncommittee and ward committee shall from time to time be nominated and appointed by such persons and in such manner as shall be directed by any orders which may be from time to time passed in that behalf by the Government of Bengal, and unless and until such orders shall be passed, shall be nominated and appointed by the magistrate of the district with the sanction of the commissioner of the division."

Read by the light of the remarks which he had just read, this section of Act VI of 1868 fully contemplated the possibility of election at some

future day, and moreover the latter part of the section distinctly recognized it, for it provided that the proportion of official members should not be more than one-third, unless such persons were elected to be members of the committee otherwise than by appointment of the Government or by any officer of Government. He thought it was a remarkable sign of the advance of public opinion that in 1868 the suggestion of elective representation was passed over absolutely without remark, but that in 1872 the subject was touched upon, and it immediately became one of those points which was hailed with satisfaction.

The hon'ble member who opened the debate (Mr. Bayley) had made some remarks about the police. He (Mr. Dampier) cordially concurred with the hon'ble member in those remarks, and he believed that there never had been any doubt in the Government of Bengal that the police arrangements in municipalities under the existing Acts were too elaborate and too expensive, and that the wishes of the people were not sufficiently consulted as to its details and constitution. He entirely went with the move which was now made in that matter.

With regard to the remarks from the hon'ble member opposite (Baboo Digumber Mitter) he did not quite understand the force of his strictures. His objection seemed to be that in spite of any provisions which could be made, the magistrate would still be the only real and effective power in municipalities. Now did the hon'ble member mean to say that the case would be better if there were no municipalities? Did he wish to say nakedly that he would prefer to have the magistrate acting under the direct control of his official superior and the Government without any thing in the shape of municipal machinery? If he did mean this he (Mr. Dampier) could only say that he did not think the hon'ble member in this respect represented the views of many of his countrymen. He (Mr. Dampier) admitted that a magistrate with strong opinions and a strong will would no doubt exercise great influence within the debating room of the municipality; and having induced the commissioners to adopt his views, he would come out, armed with their concurrence, a much stronger man as Chairman of the municipality and acting in their name, than he (with respect to his official superiors and to the outer world in general) would have been had he stood alone; and in this sense he confessed that this Bill might be said to add to the power of the magistrates. But was the hon'ble member prepared to say that municipalities in remote districts in Bengal were the only working bodies in which that took place? Was it not the case in every combination of men who had to act together? Even though in theory each had the same weight as his fellows, the man who, by position or other circumstances was the strongest, or who had the strongest will, would first influence his colleagues to accept his views, some unwillingly, some heartily, and then would go forth much stronger as the representative of those views, although in reality they were the private views of one man. He (Mr. Dampier) could not think that the hon'ble member's views as to the magistrate's despotism would in any way be served by sweeping away his municipal colleagues who, however weak, would certainly to some

extent trammel and check a wrong-headed and despotic magistrate from carrying out his own measures.

There were two or three minor points to which he wished to direct the attention of the Select Committee. One of these was section 59. It was a very old rule in municipalities, and one which obtained generally: it related to the tax on horses and carriages, and provided that ownership for any number of days in a quarter created liability to the tax for the whole quarter. It was urged that this was an expedient rule, because there was so much concealment that it was impossible to ascertain on what day a vehicle was set-up. He thought that that difficulty ought to be got over by a compromise. Surely if you took half the tax of the quarter you would presumably lose in one half of the cases and gain in the other. It seemed to him that it would be more just to take one half the tax for the quarter from those who set-up a vehicle within any quarter than to levy the full tax for the quarter.

The next point which he would notice was the power of delegating certain powers of the Lieutenant-Governor as mentioned in section 202 and elsewhere in the Bill. He would be obliged if the hon'ble member in charge of the Bill would explain how it was proposed to work that provision.

The last point to which he would allude was the tax on processions and ceremonies. He believed that processions were a good subject for taxation; but the scale of fees proposed seemed open to objection, and he would commend its consideration to the Select Committee. Again, it would be absolutely necessary to define what a procession was in the sense of the Act, so as not to leave a door open for harassing interference from the police in the exercise of the powers conferred on them by the provisions of the section.

MR. BERNARD said he was glad that so many members of the Council had considered the Bill and had expressed their opinion thereon; and he was still more glad to find that most of the speakers, though they had criticised some parts of the Bill, did in the main seem able to approve and support its principles. He felt sure that whatever had been that day said would be of much use to the Select Committee if the Council should see fit to allow the Bill to be read.

The objections and remarks made by the hon'ble members had referred in the main to the constitution of the governing bodies under the Bill, to its taxation clauses, and to the sections regarding education. He (Mr. Bernard) would first refer to what had been said on these three main heads, and he would afterwards address himself to the remarks and questions made on points of detail. It must be remarked that the hon'ble member who opened the debate (Mr. Bayley) had expressed an apprehension that the magistrate would have too little power in the towns of his district; that the non-official majority of two to one would outweigh him and outvote him; and that the opposition might prevent necessary improvements being made, and might prohibit taxation being levied. This was one view; but another hon'ble member (Rajah Jotendro Mohun Tagore) had taken an opposite view: he had avowed his belief that the magistrate would have too full and too wide powers in any municipality, and that the non-official commissioners of a town

would in reality exercise very little influence over the affairs of their town. Now he (Mr. Bernard) did not mean to say that the truth necessarily lay midway between two extremes, but the avowal of these two opposite views might to some extent show that the proposals of the Bill were moderate; and he would assure the Council that the framers of the Bill had at any rate intended to strengthen the hands of the commissioners, and to arrange for the representatives of the town managing, to use the Hon'ble Digumber Mitter's words, the affairs of their town themselves. The hon'ble member last named had drawn a somewhat sad picture of the constitution of society in a Bengal town; he had said that in Bengal townsmen would not be found who would be active and independent municipal commissioners; men would not have the courage or the wish to oppose a magistrate if they thought him wrong; and so in reality the supposed municipal government would be a farce. He (Mr. Bernard) was glad to have heard the hon'ble member say that such views would not be approved by the hon'ble speaker's educated fellow countrymen. Mr. Bernard would hope that on this particular point the educated men who would differ from the hon'ble member might be better informed than the hon'ble member himself. He would say that at any rate this Council had, in the person of the hon'ble member himself, a specimen of a Bengali gentleman who would, without fear and without favor, express opinions which might perhaps be distasteful to the official members of the Council. He hoped that in Bengali towns municipal commissioners might be found who would not forego honest opinions merely because the magistrate disapproved those opinions. He felt sure that men of that stamp did exist, and he trusted their number would increase.

Much had been said that day regarding the various forms of taxation which the Bill permitted municipal bodies to adopt. One hon'ble member (Rajah Joteendro Mohun Tagore) had said that these multiform taxes would frighten the people; that they would and must result in increased burdens, which could hardly be borne in these days, when impost had followed on impost, and the people could endure no more. So far as he (Mr. Bernard) could remember, the only new tax imposed during the last ten years was the income tax in its various shapes, though doubtless municipal taxation *had* increased. But he would submit that whatever might have been the small increase in the weight of municipal taxation, that increase was not nearly in proportion to the rise which had occurred in the rents, in the price of produce, in the wages of labor, and in the cost of all commodities. He would ask leave again to point out that the Bill proposed only two new forms of taxation, viz. the tax on processions and the octroi tax; it by no means bound or even asked municipal bodies to adopt more of these taxes then they liked. He was glad to find that the members of the Council were on the whole favorable to levying a small license tax on processions; he regarded the criticism of the hon'ble member opposite (Rajah Joteendro Mohun Tagore) as entirely just, when he said that the meaning of the word "ceremonies" in section 78 ought to be defined; he said that as the words stood—a dinner party, a durbar, or a dance might be liable to license tax; and this was not the intention of

the framers. He (Mr. Bernard) made no doubt but that if the Bill were referred to a Select Committee, the Committee would be able either to define "ceremonies," or else to exempt ceremonies from taxation, and to make the section refer to street processions only. He quite acknowledged that the octroi tax was at present foreign to Lower Bengal; and that this particular form of taxation could not be applied to the straggling towns which were like long drawn-out villages on the banks of Bengal rivers. But, as one hon'ble member (Mr. Bayley) had said, there were towns in Behar more like the towns of Northern India, and to some of these towns octroi duties might perhaps be applicable. One of the hon'ble members for commerce (Mr. Robinson) had pointed out that in effect the several municipal taxes, if ever they existed in the same town, might become cumulative; but the hon'ble member went on to say that such cumulative taxation would befall the rich only. He (Mr. Bernard) was free to admit that it might happen that a rich man at Alipore might have to pay carriage-tax, and that he might indirectly pay house-tax, and that perhaps in very occasional cases the same man might have to pay the tax on trades and callings; but any person so circumstanced would be a rich man, and he would probably not pay more than he ought fairly, with reference to his property and his means, to contribute to municipal necessities. So far as he had been able to judge, the risk with all municipal taxation in India was lest the poor should have too large a burden, and the rich should get off too cheaply. If, when the Select Committee and the Council at the settlement of the clauses came to consider these several forms of taxation, they considered that the taxes were too many, or that they pressed too heavily, then of course it would be open to the Council to disallow any one or more of the proposed alternative taxes. But he would again remind the Council that all these taxes were permissive and not obligatory.

He was particularly rejoiced to find that nearly all the members who had referred to the matter approved the proposal permitting municipal funds to be spent on educational purposes. He thought that if any such provision became law, a very great point would have been gained. One hon'ble member (Mr. Bayley) had expressed a fear that perhaps municipal commissioners might make the mistake of devoting funds paid in part by the poor to the maintenance of colleges and high education, and that they might not provide sufficiently for the education of the poor. So far as he (Mr. Bernard) had been able to understand these matters, there was no ground for apprehension that local money would be spent too freely on colleges. It was only in last year's report that one of the most experienced inspectors remarked that out of the nineteen Government and Missionary Colleges in Bengal, only one, the Madrissa College in Hooghly, was in any way supported by private endowments or local subscriptions. Natives of Bengal when they wished to help education—and it must gladly be admitted that they did in some parts of Bengal contribute most liberally—established or endowed English schools of the middle and lower classes, and occasionally maintained vernacular schools. He anticipated that if this part of the Bill became law in any thing like its present shape, the result would be that municipal

commissioners of towns would make grants to English and vernacular schools, and that in the rural municipalities the punchayets would aid *patshalas* or village schools. A question had been put by an hon'ble member (Mr. Dampier) whether the Bill contemplated that grants-in-aid should continue to be given under the present rules, or whether such grants would cease. He (Mr. Bernard) had no right or title to speak in behalf of the Government, or to say what Government would do. He was aware that the existing grant-in-aid rules were at present being remodelled, and apprehended that Government could not pledge itself, for a number of years to come, as to the particular policy it would adopt in regard to grants-in-aid. But he believed that the Government of Bengal had formerly, did now, and would for the future, grant all the money it could spare to aid schools of whatever calibre, either in towns or in villages.

The hon'ble member on his right (Mr. Bayley) had made what seemed a very just criticism on section 18 of the Bill, which provided for vesting public dispensaries, schools, and such like institutions in the municipal commissioners. The hon'ble member pointed out that no means were provided for compelling the commissioners to do their duty by such institutions. It seemed to him (Mr. Bernard) that it would be expedient, if this section were to stand, to add a clause, something like that contained in section 222, providing that on a presentation from a certain number of rate-payers to the effect that the commissioners had neglected or abused their trust in regard to any of the institutions mentioned, the magistrate might inquire, and, if necessary, intervene to preserve such institutions from neglect or misuse.

The only other criticism of the hon'ble member (Mr. Bayley) referred to the control, appointment, or dismissal of the Town Police. It would be observed by the Council that the Bill provided that no policeman above the grade of an ordinary constable should be dismissed without the approval of the magistrate, but undoubtedly in respect of all other matters the Town Police would, as the Bill stood, be under the orders of the municipal commissioners, and the district superintendent of police would have little control over them. Perhaps the Select Committee might see fit to modify in some degree the provisions of the Bill so far as the dismissal and discipline of the Town Police went; but he (Mr. Bernard) strongly thought that the commissioners, or a sub-committee of their body, would be the best authority for selecting and appointing Town Police; the commissioners would know the right men, they would choose their own towns-people—men who would know who were bad characters, and who would know what steps should be taken to repress and detect crime. At present it often happened that outsiders, up-country men, people who knew nothing of a town, were appointed to be its police.

The hon'ble member who represented the suburbs of Calcutta (Moulvy Abdool Lateef) had recommended that the present Bill should not be applied to the suburbs of Calcutta, and had suggested that another short Bill should be introduced providing for such matters as might be wanted in the suburbs. It undoubtedly was the case that the suburbs were a very large and important

municipality; that, as the Hon'ble Member had said, its residents were numerous and oppulent; but so far as he (Mr. Bernard) had learned, the people and the Commissioners of the suburbs did not take in their municipal affairs anything like the warm interest taken by the Justices in Calcutta affairs; and in this respect, at any rate, the suburban municipality differed widely from the Calcutta corporation. Still he felt sure that any representation which the suburban corporation might make on the subject of the Bill, or their exemption therefrom, would receive full consideration at the hands of the select committee.

In conclusion, Mr. Bernard assured the Council that, so far as the wishes of the mover of the Bill went, the hon'ble member Mr. Robinson's wishes would be fulfilled; and the natives of towns all over Bengal would have the fullest opportunity of expressing their opinion on the Bill, for a translati n would be circulated to scores of municipal bodies and to British and Native officers all over the country.

His Honor the President said that he thought he might follow the hon'ble member in charge of the Bill in expressing his gratification that this very important measure now submitted to the Council had been received by the members of the Council, including the non-official members, who had addressed us to-day, in a manner, upon the whole, extremely favorable. He was himself especially gratified to observe that the members had expressed themselves in a manner which led him to hope that they would accept more or less completely the plan which this Bill laid down, in respect to the very important subject of education. The proposal which in certain clauses of this Bill was submitted to the Council in respect to education was what he believed he might call a very moderate compromise of a very difficult subject. He had been particularly glad to hear that the hon'ble member to the right (Baboo Digumber Mitter) approved of the proposal in that respect almost to the full. Other hon'ble members had also expressed themselves in a way more or less completely favorable to the views of the Government, and His Honor was sanguine that after these clauses of the Bill had passed though the hands of the committee, the Council would arrive at a conclusion that would be satisfactory to moderate and reasonable men all over the country.

He observed that very divergent views had been expressed upon the subject of municipal self-government by the hon'ble members who had addressed the Council. The hon'ble member on his right (Mr. Robinson) had taken the sanguine view which His Honor had taken, viz. that municipal institutions were indigenous to the country, and we might hope that in a country where those institutions were in full working order, long before we had them in the British Isles, in a country in some respects that of their birth, such institutions might flourish and rapidly succeed. The hon'ble member on the right (Baboo Digumber Mitter), on the other hand, had taken what he might term a gloomy view of the political position and the social characteristics of his countrymen. His Honor believed that another hon'ble gentleman (Mr. Wyman) had placed the truth very fairly when he said that no doubt such institutions had at one time existed in the country, and that there

was equally little doubt that they had now, for the most part, died out. From these observations His Honor would draw a very moderate conclusion, that institutions which had existed in this country and which had died out might yet be revived with care and trouble. He admitted that there was a great deal of truth in the observations of the hon'ble member on the right (Baboo Digumber Mitter) ; but when His Honor looked back to the history of this great country, he could not despair of ultimate success. His belief was that these self-governing institutions were a very essential part in the very constitution of the Aryan race. He was sanguine that the difficulties which the hon'ble member so vividly depicted might be overcome, and that we should eventually arrive at efficient self-government. He admitted that we could not arrive with one bound at such a state of things ; he could not hope to see the system brought to perfection ; but at any rate he thought that we might make a beginning, and that our successors might arrive, at a future time, at a very favorable result. On one point he could not altogether agree to what had been said by the hon'ble member on this subject. His Honor understood the hon'ble member's argument to be that these municipal institutions must be the outcome and not the precursor of free political institutions. Now His Honor's view was otherwise. He believed that human nature was so constituted that what was called patriotism and public spirit were the natural accompaniments and result of self-government. He believed that while institutions were despotic and you had no self-government you could not have public spirit and you could not have patriotism. On the other hand he believed that if you made a beginning of self-government, public spirit and patriotism would result. Men who accepted office on behalf of their countrymen would know that their actions would be watched and judged by those for whom they acted, and his hope and belief was that public spirit would result. How far that would be effected remained to be seen, but he trusted that the members of the Council would agree with him that it was desirable to make the attempt.

The hon'ble member who spoke early in the debate (Rajah Joteendro Mohun Tagore) alluded to the fear which was spreading about the country that we were daily increasing the burdens of the people. Now His Honor thought that it had been explained by the hon'ble member in charge of the Bill that whatever the Bill did, it did not increase the compulsory burdens of the people to any great extent. In fact, His Honor might say that the very moderate provision for education was the only provision in respect to which any new and increased obligation was imposed. The taxation under the Bill, as had been so often said, was in its various forms alternative, and it was only the wish of Government to give to municipalities a choice of the form of taxation which they preferred. That surely was not an increased obligation, but an increased freedom which we afforded to them. It was quite true that municipalities would have under this Bill new responsibilities and new duties. In point of fact, the result in some cases might no doubt be to some extent to increase taxation ; but his view was that such increased taxation would not result from increased obligations imposed upon them by the Government, but

would be the outcome of new wants, new knowledge, and of new demands for things to which they had not been accustomed, but which the people of the country would gradually ask to obtain at their own expense. It was not the case that the burdens imposed by the Government would be extended, but the Bill would give the people power to extend their own burdens if they wished to do so. Government had no wish to shift the burden which was now borne by itself. By no means. They said—"The power of the Government is limited, the means of the Government are limited, the finances are limited. We are unable to give many great improvements which the progress of the age demands. We can do so much, and we can give you so much money; if you wish to have more you must arrange for the means to do more, you must tax yourselves, as the people of all civilized countries tax themselves; and the opportunity to do so, is the opportunity we now ask the Council to give you."

On the subject of education he might say, that perhaps the word "compulsory," looking to the sense in which the word was used in England, was a somewhat dangerous word, because it implied not that municipalities should be compelled to provide means of education, but that the people were compelled to go to school. Now that was by no means intended. We did not seek to press education to that extent. We felt (as an hon'ble member had said) that it was not desirable to educate men beyond their position in life. He thought that the lower class of education given in *patshalas* to the agricultural population was most fitted for the people of that class of society. The hon'ble member on the left (Mr. Dampier) had thoroughly explained the views of the Government when he said that the object of the Government was simply to do that which was now being attempted to be done in England, that is to say, "if you provide the means of education with such aid as Government can give you, well and good; if you do not, then we will come in and require you to do so." We hoped that the voluntary provision of schools would be the ordinary rule, and the general arrangement throughout the country. And it would only be in exceptional cases, and where there were absolutely no means of education available, that the compulsory clauses of the Bill would be put in force.

His Honor thought that the hon'ble member in charge of the Bill had sufficiently alluded to the objection in regard to section 18 of the Bill by which certain buildings were to be made over to the charge of municipalities. That was a provision which the select committee might with advantage narrowly scrutinize. It was not the object of the Government to turn over to municipalities the cost of buildings at present maintained by the Government. The object was to enter into arrangements with municipalities with regard to certain institutions towards which they contributed, and the management of which they might very fairly claim.

There had been a good many observations made upon the subject of the octroi duties. Perhaps it was desirable that he should put his view on this subject broadly before the Council. He believed there was in Bengal a sort of horror, if he might so term it, of anything that was Punjabee: it was like shaking a red flag in the face of a bull, to quote anything as coming from the

Punjab. He would therefore ask the Council to enter upon this subject without prejudice in respect to this octroi system being supposed to come from the Punjab. The Bill in no respect proposed to compel any municipality to adopt the system of octroi duties. All that the Bill said was, that amongst what he had described as a variety of good things, of which they might take their choice, was the system of octroi duties. Although there was in Bengal a prejudice against this system of duties, which was supposed to come from the Punjab, he must assert that it was the unvarying experience of various provinces in India as well as in many countries of Europe, that no municipal tax was so permanently popular as octroi duties. Very many municipalities in different parts of the country who had objected to the house tax and other more direct taxes, had rushed, if he might say so, to these octroi duties as a relief. Under favorable circumstances they were able to raise a revenue which was hardly felt. He must admit, however, that the system, as experience had proved, was liable to be attended with a good many evils. Indeed, the abuses which might attend a careless imposition and levy of these duties were so great, that the system had called forth from the Government of India the remarks which had been read to the Council; but these remarks were intended to improve, not to put down the system: most of these evils resulted from the fact that the system was too popular. Municipalities in some parts of the country had too universally resorted to that system. He freely admitted that under many circumstances it was attended with many difficulties, and that to certain municipalities it was not properly fitted; but to the circumstances of many others it was extremely well suited. It was a question between direct and indirect taxation, and as indirect taxes were the more popular in the general taxation of the country, it was the same in respect to municipal taxes. Where the circumstances of a municipality were really suitable, he thought it was better to impose indirect taxes of this sort with due care and caution than to tax the people by those direct methods to which they were extremely averse. For the exercise of due caution the Government would be responsible, and His Honor must express his strong hope that the Council would give this subject an unbiassed consideration, and not throw out this mode of taxation without having very fully and carefully considered the matter.

As regards the police there was a good deal of truth and justice in the remarks which had fallen from the hon'ble member who opened the debate. No doubt we had at present gone too far to one extreme—that was to say, in giving to the District Superintendent of Police complete and exclusive power over the police of towns; on the other hand the Bill removed the town police so absolutely from the control of the police authorities, that we might be going to the other extreme. He hoped therefore that the Council would carefully consider and manipulate these provisions.

Then he came to the remarks of the hon'ble member on the right (Rajah Joteendro Mohun Tagore) in regard to the despotic character of these institutions. The hon'ble member seemed to suppose that the Magistrate would as a rule override the committee, and that the Government would rule over the Magistrate, and that the municipalities would be but little despotisms

after all. Perhaps it was scarcely necessary that His Honor should take up the time of the Council in answering that assertion, because the objection had been well answered by the hon'ble gentleman on the left (Mr. Dampier), who asked whether the hon'ble member really thought that it would be better if there were no municipalities, and the municipal government were directly administered by the Government officials. His Honor thought that it was entirely a question for the Select Committee to whom this Bill would be referred, to carry out, in any way that seemed to them best, the declared intention of the Government in introducing this Bill, viz. that these municipalities should not be shams but realities. If it appeared to the Select Committee and the Council that too great powers were being given to the Magistrate, they could lessen those powers: if it was considered that the mode prescribed for the exercise of the Magistrate's powers was such as was really unfavorable to the development of self-government, it was free to the Committee and the Council to alter it. His Honor's object was clearly and distinctly to give to municipalities real self-government, and not to make them sham institutions, and he trusted that before the Bill emerged from the committee it would be put into such a shape that that object would be obtained.

Then as regards small municipalities, which were dealt with under the provisions of Part XII of the Bill, the same hon'ble member had observed that he did not understand the provision in respect to chakran lands, and it was therefore necessary that His Honor should offer some further explanation upon the subject. He might say that it was not intended that there should be two chowkeedars where there was now one; that one should be provided from the chakran lands and the other by the municipality. The object was simply to avoid altogether the whole question of chakran lands and to leave it for treatment as a separate and distinct subject. The effect of the bill as it stood would then be this. These small municipalities were bound to see that a chowkeedar was maintained, who should receive a salary of not less than Rs. 3 a month. If the chowkeedar received Rs. 2 a month from the chakran lands, then the municipality would supplement his salary by giving an additional rupee; and where there were no chakran lands the Bill would come into full force and effect as regards the maintenance of chowkeedars by the municipality; but the minimum pay of the chowkeedar should be such that together with anything received from chakran lands he should receive not less than Rs. 3 a month. His Honor might say, while on this subject of small municipalities, that the Government did not attempt to make them at once complete municipalities, but simply to make a small beginning towards such institutions. It was not proposed to impose upon them the obligations which were proposed to be imposed on the larger municipalities. Although it was desirable that village *patshalas* should exist in order that the agricultural classes should have such education as would enable them to understand their affairs, still he believed that as the Bill stood it was not intended to provide that in these small village municipalities the maintenance of *patshalas* should be made compulsory, nor were there any other compulsory clauses in respect to these municipalities,

except as to the chowkeedar. Government wished only to make it optional with these municipalities to keep up *patshalas* and also to provide if they wished drinking water, and one or two other things for which there were frequent cries from rural villages.

Then we came to the remarks of the hon'ble member on the left (Moulvie Abdool Luteef) with regard to the suburbs of Calcutta. His Honor might say that the object was to make this a large and comprehensive Bill, and to make its provisions such as to fit it for both large and small municipalities; but he believed there was a good deal in the wants and constitution of the suburban municipality for which provision was not made by this Bill. It would be for the Select Committee to consider whether the Bill could be made suited to the demands of the suburban municipality. He had no doubt that the Select Committee would be able to give a good opinion on that subject, and would be able to guide the Council in the matter.

It had also been suggested that if we were to offer to municipalities a system of election, it would be better to begin in the large municipality of Calcutta. His Honor was not quite sure that a very large municipality was the one which we should select to make a beginning of the system of election; but if any hon'ble member should lay before the Council a scheme by which it might be possible to establish a representative municipality for the people of Calcutta, His Honor would be ready to give it the most favorable consideration. He was conscious that at present the constitution of the Calcutta municipality was not in all respects the strongest and best that could be devised. He felt that the burden of responsibility was shared between the Government and the Justices in a somewhat uncertain way. The Justices were appointed by the Government, and to a certain extent they relieved the Government of the responsibility of the municipal government of the town, but to a certain extent the Government which appointed those Justices felt that it was responsible for the good government of the town. He should be very glad if a system could be devised by which we could have ward representatives and a municipal government could be formed by the people who should be the real representatives of the town itself.

His Honor thought that the hon'ble member in charge of the Bill had satisfactorily met the doubts entertained by an hon'ble member (Mr. Dampier) in regard to the position in which the Government would stand as to grants-in-aid for education. The Bill was not intended to discontinue the system of grants-in-aid. On the other hand, as the system of education extended, as the demands on account of education increased, the means available to us for the purposes of education did not extend, and Government could not pledge itself to give fresh grants-in-aid to the same degree and under the same rules as at present. His hope was that it would be possible to avoid any material diminution of the present grants-in-aid, but he was not in a position to say that Government could increase the present expenditure in that respect. Government must be trusted to devote the funds now available for the purpose honestly and fairly, but we would not pledge ourselves to any particular administrative rules on the subject.

His Honor thought that there were no other subjects in connection with this Bill upon which he need trouble the Council with any further remarks at present. He would merely say that, taking on the whole the favorable view which the Council had taken of this Bill, he trusted that it would prove to be an efficient measure. If the Council should pass the Bill we should try to do our best in the hope that in the course of time the institutions which we were now endeavouring to foster would develop themselves more and more, and that a few years later we should have an immense amount of self-government throughout the country.

The motion was then agreed to; and on the motion of Mr. Bernard the Bill was referred to a Select Committee consisting of Mr. Dampier, Mr. Bayley, Moulvie Abdool Luteef, Mr. Wyman, Rajah Joteendro Mohun Tagore, and the mover.

Mr. Dampier said he thought more satisfaction would be given to the Native community if Baboo Digumber Mitter's name were added to the Select Committee, and he would therefore make a motion to that effect. The motion was agreed to.

The Council was adjourned to Saturday, the 27th instant.

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*Saturday, the 27th January* 1872.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
V. H. Schalch, Esq.,
H. L. Dampier, Esq.,
A. R. Thompson, Esq.,
S. C. Bayley, Esq.,
C. Bernard, Esq.,
Moulvie Abdool Luteef, Khan Bahadoor,
Baboo Digumber Mitter,
B. D. Colvin, Esq.,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
and
Rajah Joteendro Mohun Tagore, Bahadoor.

## NEW MEMBER.

Mr. Schalch took the oath of allegiance and the oath that he would faithfully fulfil the duties of his office.

## CALCUTTA PORT IMPROVEMENT.

Mr. Bernard moved for leave to bring in a Bill to amend the Calcutta Port Improvement Act, being Act V of 1870 passed by the Lieutenant-Governo-

of Bengal in Council. This Act, as the Council would remember, was passed after much discussion a year and a half ago; its effect was to make over the custody of the port of Calcutta and its revenues to the Port Commissioners. In the opinion of all persons qualified to judge, the arrangement then sanctioned by this Council had worked extremely well. The Port Commissioners, so far as the port of Calcutta was concerned, had stepped into the place of the Government; and they certainly had, it was generally believed, done more for the port during the last eighteen months than had been done during a good many previous years. There was one respect, however, in which the Port Commissioners did not, under Act V of 1870, occupy precisely the position which the Government had formerly occupied. Under the old Port Act (XXII of 1855) the East India Company, that is the Indian Government, had been exempted from liability for any injuries or losses which might be caused by default of the Government harbour officers. That provision had not been re-enacted in favor of the Port Commissioners by the recent Port Trust Act; and therefore, by the common law, the Port Commissioners would be liable to actions on account of loss which might be caused by the occasional carelessness or indiscretion of their officers, or for injuries resulting from any undetected defect in the mooring, or from such like untoward accidents. From a perusal of the long debates which took place when the Port Trust Bill was considered by this Council, he had not been able to ascertain whether the Council intentionally omitted to re-enact the indemnity clause. Some discussion indeed took place, and an hon'ble member opposite (Mr. Robinson) spoke regarding the necessity of enforcing the due exercise of care by the Commissioners and their officers in regard to certain duties connected with warehousing goods. But the Bill now proposed did not touch the sections of the Port Trust Act which referred to warehouses; all that was intended was to exempt the Commissioners from liability for the default of harbour officers only. The matter stood just thus: if the Commissioners were to continue liable for such defaults, they would have to maintain high port dues, and they would have to establish an insurance fund to meet occasional demands for compensation, which might arise out of the carelessness of a harbour officer. The Chamber of Commerce had been consulted as to whether they thought this indemnity should or should not be given to the Port Commissioners, and he (Mr. Bernard) asked the Council's permission to read an extract from the Chamber's letter on this point. The then state of the case was so clearly and fully put by the Chamber, that he would, with the permission of the Council, read what they said. Their Secretary wrote:—

"The Commissioners were, as the Committee understand, appointed for the purpose of endeavouring to work the Port of Calcutta more efficiently than heretofore, and, if possible, also with greater economy to the vessels frequenting it. The arrangements so far carried out have resulted in a considerable surplus revenue, in virtue of which a reduction in the dues now levied on shipping might reasonably be expected at no very distant date, and the Committee believe is actually under contemplation by the Commissioners. It is manifest, however, that if a responsibility is to be laid on the Board which did not attach to the Government, in whose hands the management of the port was previously vested, and which may at any time entail a heavy pecuniary loss, the first duty of the

Commissioners would be to provide for such contingencies, thereby indefinitely delaying the great desideratum of reduction of charges. The matter is very much, as His Honor the Lieutenant-Governor remarks, one of insurance, and the Committee are decidedly of opinion that ship-owners would prefer continuing to run the amount of risk they have hitherto borne in respect of collision and other accidents, than to secure immunity, which it might often be matter of difficulty to enforce, by a continuance of existing heavy dues."

The Chamber of Commerce were, the Council would perhaps consider, better qualified than any one else to give an opinion upon this point.

The Government of Bengal concurred in the Chamber's view, that it would be better for the trade of Calcutta that the Port Commissioners should not be obliged to insure themselves against casual claims of this kind, because such insurance must involve higher port-dues.

Mr. Bernard asked leave to bring in a short Bill to give effect to the views of the Chamber of Commerce, and to re-enact in favor of the Port Commissioners the indemnity given to the East India Company by section 61 of Act XXII of 1855; such indemnity being against the default of the harbour officers only.

Mr. Schalch said the circumstances under which it was proposed to introduce this Bill, and the reasons for its introduction, had been so fully explained by the hon'ble member in charge of the Bill, that there remained little more for him to do than to say that, as he was connected with the body of Port Trust Commissioners, he was in a position to state that their only object and desire was to place themselves in the same position which had been held by the Government when they had charge of the port, so as to enable them to carry out their desire to reduce as soon as possible the heavy charges which were now, as a matter of necessity, levied from the port.

His Honor the President said, he hoped it would be thoroughly and entirely understood by the Council and the public that the object of this Bill was not to change the state of things which had heretofore existed, but simply to maintain that state of things. As had been explained by the hon'ble member in charge of the Bill, these servants of the Government had been placed in that position that the Government should not be responsible for any negligence or misfeasance committed by them. Now a doubt had been raised as to whether, as servants of the Port Trust Commissioners, they were in the same position as the servants of the Government before the passing of the Act which it was now proposed to amend, and it was proposed to put them in the same position as the servants of the Government. It seemed to him that as the Port Commissioners were not a private body, the proposal was not unreasonable. He had referred the matter to the Chamber of Commerce, who were the guardians of the interests which were represented in this matter, and they had expressed their opinion in favor of maintaining the state of things which existed formerly under the Government. Therefore, as had been explained by the hon'ble member in charge of the Bill, this Bill had been prepared and laid before the Council.

The motion was agreed to.

Mr. Bernard said, that as the Council had been good enough to grant leave to bring in this Bill, and as the Bill was a very short one, and there was no

technical difficulty nor any question of principle involved in it, except the one principle which the Council was prepared to adopt, he would ask His Honor the President to suspend the rules of the Council, in order that the Bill might be read in Council and referred to a select committee. As no hon'ble members seemed to object to the Bill, perhaps there would be no objection to adopt this course.

His Honor the President said, he did not think it desirable that this Bill should be hurried with anything like unseemly haste through the Council, and his wish and intention would be, that while suspending the rules at this stage of the Bill, nevertheless such time should be given to the public before the Bill was finally passed as ordinarily would be given under the rules. He thought that it would be desirable that this Bill should be referred to a Select Committee as soon as possible, and published for general information, in order that opportunity should be given to the committee to consider any further questions which might arise in connection with the Port Improvement Act. He thought hon'ble members would agree with him that it was not desirable that the Act should be continually tinkered; and if any other points should arise in connection with this Bill, the committee could, if they thought it right to do so, insert those points in addition to the single point which was now laid before the Council by the Government.

The rules were then suspended, and on the motion of Mr. Bernard the Bill was read in Council and referred to a Select Committee, consisting of Mr. Schalch, Mr. Robinson, and the mover, with instructions to report in a fortnight.

## JUSTICES' BORROWING POWERS.

Mr. Bernard moved that the Bill to extend the borrowing powers of the Justices of the Peace for the Town of Calcutta, and to provide for the repayment of municipal debt, be re-considered. The Bill had, as the Council would remember, been reported upon by a Select Committee and its clauses had been settled by this Council. But the Bill had not passed because the Justices of the Peace for Calcutta had moved the hon'ble President to postpone the final passing of the Bill until they should have an opportunity of considering its scope. The letter from the Justices (No. 45 of the 15th instant,) had now been received, and a copy of that letter was to-day, Mr. Bernard believed, in the hands of every member of the Council. The purport of the letter and of its enclosure was to ask that an assurance might be obtained from the Government of India on behalf of the Secretary of State, to the effect that the imperial treasury would advance to the corporation funds to meet any debentures which might fall due. If this were done, the whole debt of Calcutta would eventually become a debt to the Indian Government; and the corporation proposed to set apart two per cent. on the total of such debt yearly, and to pay over to the Indian Government the sums so set aside in liquidation of any loans made or hereafter to be made by that Government to the corporation. It was certain that this Council

could not bind the Indian Government to any particular course of action in this matter, and even if the Government of India were disposed to grant loans on liberal terms to the Calcutta corporation, such a disposition could not very well be made the foundation for legislation in this Council. As the local Public Works Loan Act (quoted in paragraph 2 of the Justices' letter) stood, the Calcutta corporation must take its future loans from the Government of India, unless the Lieutenant-Governor for the time being should see fit to relax this rule under the power conferred upon him by a subsequent section of the Act. So far as the Government of Bengal was at present advised, it did not propose to relax the rules, and the future loans of the Calcutta corporation would probably be contracted from the Indian Government on fairly liberal terms. But it seemed best that this Council should so legislate in the present case as to meet all contingencies; so as to provide for an efficient sinking fund, whether the money was borrowed from the Indian Government or from the outside public. Mr. Bernard trusted the Council might be disposed to concur in this view; the Bill, as settled by the Council four weeks ago, gave full effect to this view. If the Council were pleased to let the Bill stand, Mr. Bernard for his part, and he might perhaps add on the part of Government, did not propose any material alterations in the Bill as then settled.

The Bill provided that the Justices should set aside 2 per cent. on the capital sum borrowed, and that the sum so set aside should be devoted to the repayment of debentures or to the formation of a sinking fund. As matters now stood, this arrangement would pay off nearly the whole loan in about forty or forty-two years from the present date. The earliest of the 55 lakhs of debentures matured in the year 1884. Up to the year 1884, then, the sinking fund would grow at compound interest, and the tax-payers would pay the full interest on the debentures. From 1884 the Justices for the time being might, if they so decided, reduce the burden on the tax-payers by paying off debentures, and demanding from the tax-payers interest on the reduced loan. The burden on the tax-payers would, it was hoped, be at the same time further reduced by the imperial treasury lending money at $4\frac{1}{2}$ per cent. to pay off debentures for the liquidation of which the sinking fund might not suffice. The Bill indeed, as settled by the Council, gave full and precise legal sanction to the arrangement which the Justices had (as described in paragraph 5 of their letter) decided upon, and he would say very wisely decided upon, for themselves. All that was required to make the Justices' resolution of some years back, and the action taken thereon permanent, was to enact that the sinking fund already accumulated by the Justices should be treated as though it had accumulated under the present Bill; and to this end he would move a short amendment to section 3 of the Bill. There was one other point in the enclosure to the Justices' letter to which he might refer, and that was the proposal to borrow two lakhs more to build a municipal office. The proposal seemed a reasonable and economical proposal, and he had nothing to say against it. But he abstained from asking the Council to sanction any further loan beyond the 30 lakhs sanctioned by the present Bill; because after all the drainage works in contemplation would not, as explained in the

Justices' letter of the 24th August, cost more than 21¼ lakhs, so that there would be ample margin in the 30 lakhs for any permanent structure for a municipal office. The whole question of enforcing on the municipality of Calcutta the duty of paying off, within a reasonable term of years, the funded debt now due from them, was discussed at much length on a previous meeting of this Council. He would submit the opinion that the duty now to be enforced was not so much in the interest of the debenture-holders, as in the interest of future generations of municipal tax-payers, who, if there were no sinking fund, would inherit a funded debt equal to six or seven years' gross income of the corporation. Mr. Bernard would only add that the Bill, as it was settled by the Council, was a mean, or a compromise between the two proposals; one, that in accordance with the practice of all recent Government loans to the Port Commissioners or to the corporation, the whole debt should be paid off in thirty-two or in thirty-three years; and the other proposal now made by the Justices, that the loan should be paid off in fifty years. As the Bill now stood, the 55 lakhs loan would be paid off in about forty years' time.

His Honor the President said, he believed that the arrangement that had been made when this Bill was last under consideration was, that the Bill should be published and brought forward again, so that opportunity should be given to hon'ble members to propose any further amendments they might think necessary. He observed, however, that with the exception of the amendment of which notice was given by the hon'ble member in charge of the Bill, no other amendment had been proposed; and the Council would therefore proceed to the consideration of the amendment proposed by the hon'ble member.

The motion for the re-consideration of the Bill was then agreed to.

Rajah Jotteendro Mohun Tagore said, he had to make a few observations with regard to the third section of the Bill. The hon'ble member in charge of the Bill had told the Council that as the section stood, the full amount of the municipal debt would be repaid within a period of forty-two years. But it appeared to him (Rajah Joteendro Mohun Tagore) that if the saving in the way of interest by the investment of the sinking fund in the 4 per cents be taken into calculation, the period for the repayment of the debt would come up to about thirty-two years, or the life-time of one generation. He agreed with the report of the Justices that the repayment of the debt should not be limited to the life-time of one generation, but that it should be extended to the life-time of two generations; for the succeeding generation would profit equally with the present in the benefits of the works which had been undertaken, and which were of a permanent and extensive nature, and consequently it would be hard to require one generation to pay for works that would equally benefit the succeeding generation. The Justices had suggested an arrangement which the Council, he thought, should not sanction; but he thought it just that the period for the repayment of the municipal debt should be extended to two generations, and the percentage to be set aside should therefore be lessened so as to extend the period of repayment to two generations. With this view, he would move that "one-and-a-half" be substituted for "two" in line 5 of section 3. He was fully

aware that the Justices at present did lay by a sum of two per cent towards the liquidation of their debt; but when it was taken into consideration that the Justices were about to borrow a further sum of 30 lakhs of rupees, it seemed clear that, under that arrangement, they must either raise the taxation, or put a stop to the execution of other necessary municipal improvements.

His Honor the President said, with reference to the hon'ble member's proposal, he wished to explain how the matter stood at present. His Honor's own individual view was, that the result of the works which were looked upon as improvements was so precarious, that it would be much better to follow the prudent course voluntarily taken by the Justices in regard to the loans previously contracted by them—a course by which the loans would be paid off in thirty-two or thirty-three years. It might be and he hoped it would be the case, that some of the grand works undertaken by the Justices would last for two generations; but on the other hand we knew not only that there were a great many failures, but that the advance of science caused works constructed by one generation to become comparatively little estimated by the succeeding generation, or perfectly useless to them. Take the instance of the vessels of the British fleet; their generation was a generation of ten years, not a generation of thirty or forty years; a fleet constructed in one decade was found by the next decade to be completely out of date, and it was found necessary to re-construct or entirely remodel the vessels that had been built only ten years before. His Honor would further illustrate the matter by referring to the steam engine. He was told that the rapidity by which old engines were superseded by new ones was something surprising; that the new engines consumed much less coal, and were therefore more profitable to every one except the coal owners. He was told that the best boats which the best builders could supply three or fours years ago were rapidly being superseded by better built vessels, and he believed it was the same with regard to buildings, drainage, and sanitary improvements of all kinds. If there was a probability, or even a possibility, that what we had done at the present time would be behind the requirements of the next generation, that next generation might not be willing to pay for what was done thirty years before. But he had so far yielded to the concessions urged by the Justices as to believe that it might be possible, even if not probable, that some of the works constructed by the Justices might be unusually permanent works, with regard to which it might be reasonable to extend the period of repayment to fifty years. What he wished to explain before hon'ble members committed themselves regarding section 3 of the Bill was, that that section, as now drawn, rendered it possible to extend the period of repayment to fifty years. Hon'ble members would find that the section did not provide for a sinking fund, accumulated with compound interest till the whole period which would be required to accumulate the total amount of the capital had been completed, but that sums so invested for repayment of loans were to be applied to the repayment of such portions of the loan as had accrued due. If an arrangement was made for the repayment of a portion of the loan each year, then the 2 per cent would be applied to repay that

portion of the loan as it might fall due, and the loan would not be completely paid off until the expiration of fifty years. His Honor would illustrate the matter in this way. It so happened that the debentures issued by the municipality ran to the year 1884, that is to say, thirteen years hence; consequently the sums accumulated for the repayment of the loan would accumulate with compound interest for thirteen years, and at the end of that time they would be applied to the repayment of the debentures then falling due. After that, no more interest would accumulate on those sums. Therefore, the practical result would be, as explained by the hon'ble member in charge of the Bill, that the whole loan would be paid off in forty-two or forty-three years. That, His Honor hoped, would be accepted as a reasonable compromise of the difficulty.

MR. COLVIN said, it appeared to him that this section involved two points for the consideration of the Council. The first question had already been discussed, namely the question whether the period within which the municipal loan should be repaid should be thirty years or fifty years; that he quite agreed was open to discussion with reference to the extent and permanence of future new works to be constructed by the Justices. For his own part he thought it would be more prudent to repay the loans within one generation: that period was the precise period which the Justices had themselves adopted in establishing a sinking fund. The Bill proposed to provide that in giving the Justices increased borrowing powers, it should be on the condition that the debenture-holders should be placed in no worse position as regards the ultimate repayment of the loan than that in which they now stood. The proposition of the Justices, in their letter of the 15th January, did not keep this proposal in view, and instead of a sinking fund, they proposed contracting loans from the Government of India for the repayment of the public debentures by annual instalments of 2 per cent., and thus to extend the period of their liquidation to fifty years. But it appeared to him that as in the case of former loans from the Secretary of State he had insisted on the establishment of a sinking fund for the repayment of the loan, in all future loans from the Government the same principle would be observed. The Justices might be correct in assuming that the Government of India would be willing to be their sole creditor; but it might well happen that at times when the money market was easy the public would be willing to lend on more advantageous terms than the Government of India would be disposed to accept, and he (Mr. Colvin) thought it should be open to the Justices to go to the cheapest market. There could be no doubt that the Government of India would make their own terms, and it seemed to him that it was beside the power of this Council to do more than to enact that the public loans should be paid off within a certain period, and that they should be subject to the operation of a sinking fund. Taking this view of the matter, it would be his duty to support the Bill as it stood, subject to a verbal amendment excluding Government loans from the operation of the Bill, and limiting the sinking fund to the aggregate of their public securities.

MR. WYMAN said, he should be inclined to support the section as it stood with reference to the sum to be set aside as a sinking fund: he thought it would be dangerous to go below the proportion of 2 per cent. as a sinking fund.

But there were some other points connected with this section to which he would wish to call attention, and possibly to move amendments. The section provided in line 19 that the securities were to be invested in the names of the Chairman of the Justices and the Accountant-General to the Government of Bengal. He (Mr. Wyman) thought that the sinking fund should be held independently of the officers of the municipality, and he would rather see the name of the official trustee of Bengal substituted for that of the Chairman of the Justices. He would call the attention of the Council to the remarks which fell at the meeting before last from an hon'ble member of this Council, who stated that for twelve months after the passing by the Justices of a resolution for the establishment of a sinking fund, the sinking fund was omitted to be established. It was clear that a like dereliction of duty might again occur. He thought that a trust like this should be a sacred one, and that no officer of the municipality should have anything to do with it; and he could not conceive a more proper person than the official trustee, in conjunction with the Accountant-General.

The next point to which he wished to refer was the investment of the surplus amount after the interest on debentures should have been paid. The section provided that the surplus should be invested in Government securities; but it had occurred to him that if it were permitted to the Justices to invest the surplus in their own unmatured debentures, it might happen under certain circumstances that very great economy to the tax-payers might result. As for instance, owing to the depression of the market, or want of confidence in the Justices, the debentures might fall, and it might then become more desirable for the Justices to purchase their own debentures than to invest in Government securities. He thought therefore that it was highly desirable that the Justices should be able to purchase their own debentures when they considered it advisable to do so. The security to the Government would remain the same, and as the public debt would be lessened, it would be to the interest of the tax-payers that the Justices should have this power.

RAJAH JOTEENDRO MOHUN TAGORE's amendment was then by leave withdrawn.

On the motion of MR. BERNARD the "Secretary to the Government of Bengal in the Revenue Department" was substituted for the "Chairman of the Justices" as one of the Trustees under the Act, in lieu of "the Official Trustee of Bengal," proposed by Mr. Wyman.

MR. WYMAN moved the insertion of the words, "or in Calcutta municipal debentures," after the word "Government," in line 18, so as to enable the Justices to invest their surplus funds in the purchase of their own debentures.

HIS HONOR THE PRESIDENT said that this was one of those practical questions upon which he would like to hear the opinion of the commercial members of the Council, with reference to its probable effect upon the market of such dealings.

MR. ROBINSON said he thought there could be no objection to the amendment proposed; it was simply that the Justices should be allowed to invest a

portion of the sinking fund in the purchase of their own debentures: if that was the whole change that was proposed, he did not see that it was open to any objection. It was perfectly possible to conceive certain circumstances under which municipal debentures might be a cheaper investment than any other species of investment at a particular time, and the Justices would naturally wish to invest their funds in them.

Mr. Wyman's amendment was then agreed to.

On the motion of Mr. Bernard the words at the end of the section—

"All interest accruing due on the said securities shall also, from time to time, be invested by the trustees in like manner, and held upon the like trust"

were omitted, and the following words were substituted:—

"And all moneys and securities now held by any trustees appointed by the said Justices for the purpose of paying off any portion of the said fifty-five lakhs shall be forthwith transferred to the trustees under this Act and invested in their names and held by them upon the trusts hereinbefore declared. All interest accruing due to the trustees shall also, from time to time, be invested by them in like manner, and held upon the like trust."

Mr. Dampier said that before leaving this section, he would like to have it explained how it was proposed that the Justices should be compelled to invest money for the sinking fund; whether a writ of *mandamus* was the only means of compelling the Justices to observe the directions of this Act? He took great interest in the Bill as it now stood, as the holder of the office which he had the honor at present to fill was to be one of the trustees.

Mr. Bernard said he believed the learned Advocate-General had explained that in the case of the Justices declining or neglecting to fulfil the obligations imposed upon them by the Bill, the common law would be sufficient to enforce their observance of the provisions of the law. He (Mr. Bernard) presumed that if the Justices did neglect to carry out the provisions of the Act in this respect, it would be open to the trustees to move for a writ of *mandamus* against them.

Mr. Dampier explained that what he wished to know was, whether it would be the duty of the *trustees* to enforce the provisions of the Act in this respect; or whether their duties commenced only after the investment of the funds in their name.

His Honor the President said he thought this very question had been discussed and satisfactorily disposed of on a former occasion, and he was not aware that a more stringent measure would be required to induce the hon'ble member to do his duty,—it was merely the duty of the trustees to comply with the requirements of the Act. He thought he might say that the trustees had no duty to perform until the money was placed in their hands; they were then bound to dispose of it in the terms of the Act. He believed public-spirited men would not be wanting to put the law in force when there was any occasion to do so.

Mr. Rivers Thompson said before the question was put that the section, as amended, stand part of the Bill, he wished to put to the Council a suggestion that a certain addition should be made in the 20th line. He believed it was the opinion of the late Advocate-General that in the case of investments of

money in the name of officials, it would be advisable to add words to the effect that they should be invested in the name of such officer for the time being. He would therefore suggest the insertion of the words "respectively for the time being," after the words "Accountant-General of the Government of Bengal." It was, he believed, the opinion of Mr. Cowie, that on the retirement or promotion or death of any one of such trustees, some confusion and difficulty might arise from the necessity of endorsing over the papers to their successors; whereas the insertion of the words he had proposed would have the effect of continuing the trust in the officer for the time being without the necessity of any formal transfer or endorsement. If the Council were of the same opinion, he (Mr. Thompson) thought it would be advisable to insert the words which he proposed, and he would therefore move their insertion.

The motion was agreed to, and the section, as amended, was passed.

On the motion of Mr. Bernard the Bill was then passed.

## JUTE WAREHOUSES: FIRE-BRIGADE.

Mr. Bernard moved that the report of the Select Committee on the Bill to amend the law for the registration of jute warehouses in Calcutta and to provide for the establishment of an efficient fire-brigade in Calcutta and its suburbs, be taken into consideration in order to the settlement of the clauses of the Bill. He said that the Select Committee's report and the amended Bill had been in the hands of the members of the Council for a week; and he would only very briefly explain the principal alterations made by the Select Committee, and the reasons for those changes. The Bill, as first introduced, had provided that licenses should be granted or renewed as a matter of course to all existing jute warehouses; while the Justices should have discretion in regard to the licensing of new warehouses. The Bill as first drawn was in accordance with the wishes of the Calcutta Corporation as it had then been expressed; but when the Bill was referred to the Calcutta Justices and to the Chamber of Commerce for opinion, both those bodies gave very decided opinions that the Bill did not go nearly far enough. They recommended that the conditions and restrictions under which jute warehouses might be licensed should be laid down by law, and they strongly urged that no warehouses should be licensed in Calcutta except under such restrictions as to reduce the chance of fire to a minimum. These views were in some degree challenged by the British Indian Association, but the Select Committee, after some discussion, accepted the main principles laid down by the Justices and the Chamber, and the Committee felt more free so to do because, at the debate, before the Bill was referred to a Select Committee, decided opinions had been expressed by some members in favor of more strict provisions than the Bill as originally drawn contained. The Committee accepted the plan of the Justices for giving effect to the view it was decided to adopt. That plan delegated to a sub-committee of the Justices the duty of inspecting each existing warehouse, and reporting upon its fitness for a license. This duty of inspection would be heavy, for the work would have to be done before the end of July next; but the Chairman and the Justices voluntarily offered themselves for it, and there seemed no other agency

for such a duty which would command a like degree of public confidence. The only other new provisions of importance adopted by the Select Committee were those which laid down the conditions and fees under which jute warehouses might be licensed, and which prohibited dealing in or letting off fire-works without a license. These sections were introduced after fully considering the views of the Justices and of the Chamber of Commerce. Having thus shortly explained the more important changes made in the Bill by the Select Committee, Mr. Bernard moved that the report be taken into consideration in order to the settlement of the clauses of the Bill.

Mr. Colvin said, as some of the amendments made in the Bill by the Select Committee were introduced in consequence of the suggestion he had the honor to submit to the Council, it might perhaps be desirable that he should say a few words in reference to them, although the explanation given by the hon'ble member in charge of the Bill rendered it unnecessary for him to do more than briefly to confirm what the hon'ble member had stated. The Council would probably recollect that when the Bill was introduced, he (Mr. Colvin) had observed that its provisions hardly went far enough, and that scarcely sufficient protection was guaranteed against accidents by fire to property in the neighbourhood of jute godowns, and that it appeared to him necessary to take steps for the prohibition of licenses to such dangerous depôts as now existed within the limits of the town, and their removal to the outskirts of the town.

This recommendation, which had already been backed by the Agents of Fire Insurance Companies, was referred to the various public bodies noted on the report, and with some modifications and exceptions was generally approved of, and elicited such a degree of support to the opinion that some such measure was really essential, as to render it unnecessary for him to show cause further in its favor.

But in considering the best practical way of dealing with the question of jute warehouses by legislation in the proposed direction, the Select Committee were assisted by the suggestion of the Justices, that they should take power to appoint a committee of their number to inspect and report upon existing warehouses, and on such report, that the Justices should have power to withhold a license to such warehouses as might be a source of danger to life and property in the neighbourhood, and to grant a license to those warehouses only that appeared reasonably safe for the purpose, on their consenting to conform to certain conditions, and on the payment of a certain fee. In conferring this power on the Justices in Calcutta, and the Municipal Commissioners in the suburbs in regard to jute warehouses within their jurisdiction, he trusted it would be considered that a fair and satisfactory compromise and settlement of the whole matter had been arrived at as between the abolitionists on the one side and the owners and occupiers of jute warehouses on the other. He thought that, on the whole, a very satisfactory solution had been deduced from the proposition summarily to close each and every existing warehouse. It was seldom that any public improvement of this kind could take effect without some

objection being taken as to inconvenience or injury to private property. He maintained that no real hardship would be inflicted by saying that persons should not be permitted to endanger the lives and property of the neighbourhood, simply because they had hitherto been allowed to do so with impunity. Possibly objection might also be taken to the scale of license fees being so high, but he thought that to make them lower would to a great extent defeat the purpose of the Bill. It appeared to him that the only cases in which complaint was likely to be made as to the high rate of fees would be the very cases in which licenses ought to be prohibited under any circumstances.

He would add one word as to the contribution from Fire Insurance Companies towards the expenses of the fire-brigade. When the Bill was first introduced, he had recorded his objection to this as to some extent a tax upon individuals for the benefit of the community; he could not say that this objection was altogether removed from his mind, but he was unwilling to press it further, as the amount of the charge proposed to be levied was comparatively insignificant, and if he was wrong in assenting to it, he had at any rate the satisfaction to know that he was sailing in good company, as precisely similar provisions were contained in the London Fire-Brigade Act.

He trusted the Bill would commend itself to the judgment of the Council, and would be considered a useful enactment, adding another to the many improvements which had been effected in Calcutta during recent years, and tending to raise it another step in the scale of commercial cities as regards the comfort and safety of its inhabitants and the protection of their property.

His Honor the President said, since it appeared that this Bill, in its main features, was likely to be acceptable to the Council, he was sure he might congratulate the Select Committee on the successful result of their labors. The subject was at first an extremely difficult one, and he could not have imagined that the Select Committee could have come to a more satisfactory conclusion.

The motion was then agreed to.

On the motion of Mr. Bernard, the clauses of the Bill were considered for settlement in the form recommended by the Select Committee.

The consideration of sections 1 to 3 was postponed.

Section 4 was agreed to.

His Honor the President here left the chair, and Mr. Schalch, the member highest in official rank, presided.

Section 5 empowered the "Justices" to appoint a special committee of their own number to inspect and report upon existing jute warehouses, and to award such fee to each member of the committee as they might think fit. Upon the motion of Mr. Wyman the words "at a special meeting" were inserted after the word "Justices," so as to make the appointment of the committee an act of the Justices in meeting, and not of the Chairman under the interpretation of "Justices" contained in Act VI of 1863, with which this Bill was incorporated.

Section 6 was passed with a similar amendment; and the addition to the section of the following words: "Every license granted under this section

shall be subject to the payment of an annual fee, to be imposed and paid in manner as in the next succeeding section is directed, and to such other of the conditions mentioned therein as the Justices may think fit."

In section 7 an amendment similar to that which was made in section 5 was adopted; and in addition thereto the following amendments were made:—

In clause (1) the words "or clippings" were struck out, as being included within the meaning of the word "cuttings."

In the same clause, Mr. Wyman moved an amendment to the effect that the beams of warehouses should also be made of iron. After some conversation this amendment was carried on the following division:—

| Ayes—7. | Noes—4. |
|---|---|
| Mr. Wyman. | Rajah Jotcendro Mohun Tagore. |
| „ Robinson. | Moulvie Abdool Luteef. |
| „ Colvin | Mr. Bernard. |
| Baboo Digumber Mitter. | „ Thompson. |
| Mr. Bayley. | |
| „ Dampier. | |
| The President. | |

In clause (2), which provided that warehouses should be supplied with solid doors or gates which "can be securely closed," Mr. Wyman moved the substitution of the words "shall be considered by the Justices to be safe" for the words "can be securely closed." After some discussion, this amendment was negatived.

Clause (5) provided that "the boilers and fire of any steam engine used in such jute warehouse shall be at a reasonable distance from the building." On the motion of Mr. Robinson this clause was amended, so as to stand, "the engines and furnaces used in such jute warehouse shall be placed as may be considered necessary for safety by the Justices."

Section 8 was passed with a verbal amendment.

Section 9 gave a discretionary power to the "Justices" to cancel or suspend a license on a breach of any of the conditions of the license. Mr. Wyman moved the insertion of the words "at a special meeting" after the word "Justices," so as to ensure the power being exercised only by the Justices at a meeting. After some discussion the amendment was carried on the following division:—

| Ayes—8. | Noes—3. |
|---|---|
| Rajah Jotcendro Mohun Tagore. | Mr. Robinson. |
| Mr. Wyman. | „ Colvin. |
| Baboo Digumber Mitter. | „ Bayley. |
| Moulvie Abdool Luteef. | |
| Mr. Bernard. | |
| „ Thompson. | |
| „ Dampier. | |
| The President. | |

Section 10 was passed with a formal amendment.

The further consideration of the Bill was then postponed.

The Council was adjourned to Saturday, the 3rd February.

The Council met in the Council Chamber on Saturday, the 3rd February 1872.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
J. Graham, Esq., *Advocate-General.*
V. H. Schalch, Esq.,
H. L. Dampier, Esq.,
S. C. Bayley, Esq.,
C. E. Bernard, Esq.,
Moulvie Abdool Luteef, Khan Bahadoor,
Baboo Digumber Mitter,
B. D. Colvin, Esq.,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
and
Rajah Joteendro Mohun Tagore, Bahadoor.

## JUTE WAREHOUSES: FIRE-BRIGADE.

On the motion of Mr. Bernard the Council proceeded with the further consideration of the report of the select committee on the Bill to amend the law for the registration of jute warehouses, and to provide for the establishment of an efficient fire-brigade, in order to the settlement of the clauses of the Bill.

Section 11 having been read by the President—

Mr. Dampier said he had to propose a slight verbal alteration. He thought that in the three penal sections that followed section 10, rather close attention was required to understand the distinction that was drawn between the several cases which they were intended to meet. It appeared to him, however, that what was intended was not clearly expressed. The 11th section imposed a penalty for continuing to use a place for storing jute after the 31st July next, without taking out a license under this Act, that was to say, without changing the old license which was presumably held from the Justices before the passing of this Act. Then section 12 imposed a higher penalty on any one who used a jute warehouse as a jute warehouse, which had never been so used before the 31st of July. It was the wording of this section particularly that had attracted his attention, and which he thought did not express its meaning very clearly. The 13th section imposed a penalty for a still more gross case, where the Justices had been applied to for a license, and had absolutely refused to grant it. If Mr. Dampier might be allowed to take section 12 first, it would explain what he meant. The wording of this section was, "Any person who shall without a license use any jute warehouse, for keeping or depositing jute or cotton, established after the commencement of this Act, shall be liable, on conviction before a Magis-

trate, &c." But if the Council would refer to the interpretation of the words "jute warehouse," they would find that, as it now stood, there was no sense in the section. The words "jute warehouse" meant "any warehouse, store depôt, yard, godown, or other place used for the storing, keeping, pressing, or depositing of jute or cotton or other substance for the time being subject to the operation of this Act." Now, with that interpretation, the section as it now stood would mean that any person who for the first time used for the storing of jute a place which had been used for that purpose before! This, Mr. Dampier would submit, did not make sense. Any premises to be a jute warehouse within the meaning of the interpretation section, must have been used for the storing of jute. He would therefore suggest that the words from the second line, "any jute warehouse for keeping or depositing jute or cotton established after" be omitted, and that the words "as a jute warehouse any land or premises which have not been so used before" be substituted for them.

His Honor the President had no objection to the motion being put on the principle of better late than never; still he thought it proper to represent that it was extremely inconvenient that these matters, which were purely matters of drafting, should be brought forward without any notice. He had at the last meeting of the Council impressed upon hon'ble members the necessity of giving notice of amendments which were to be brought forward in order that they might be carefully considered in reference to their bearing on the whole Bill. He did therefore trust that hon'ble members who had such motions to make would be good enough to give the Council notice, in order that these matters might be properly considered. However, as he had great confidence in the hon'ble member who had proposed this amendment, he had no objection to put it to the Council.

Mr. Bernard thought that the section did not need amendment, as it was sufficiently clear without it.

His Honor the President thought it more regular to consider the sections consecutively, and that section 11 should be considered first.

The motion was then by leave withdrawn.

Section 11 provided a penalty for using a jute warehouse without a license after the 31st July next.

Mr Wyman said this section provided a penalty on the occupier of a jute warehouse for using it as such after the 31st July. It might often happen, in the case of short leases, that the owner of the building might positively refuse to make the alterations required under the Act. The tenant, on the other hand, would have no power to do so without the owner's consent; or the owner might say that it was clearly no business of his, and the tenant might thus be saddled with an unprofitable lease for the remainder of his tenure. It appeared to Mr. Wyman that the tenant should be protected either by the law compelling the owner to render the building fit for a jute warehouse under the Act, or permitting the tenant, on the refusal of the owner to do so, to cancel the lease. This section introduced a most stringent provision regarding which the tenant had no knowledge when he took the premises. Mr. Wyman would therefore move the substi-

tution of the word "owner" for "person" in line 1, and the insertion after the word "use" in line 3 of the words "or permits to be used," the effect of which would be to throw upon the owner of the premises the responsibility of bringing the premises into a fit state for use as a jute warehouse. He did not think that such a provision would be hard, because the premises would be thereby improved, and would always be lettable for the purpose. If the Council accepted this amendment, section 2 would also require amendment.

His Honor the President said it seemed to him utterly impossible to exempt the occupier altogether from liability under this section. He thought both the owner and occupier might be held responsible for using an unlicensed warehouse. He would suggest that the hon'ble member should confine himself to his second amendment, which would have the effect of making both the owner and occupier liable under the section. But if this amendment were carried, a fresh clause would be necessary to regulate the position of owners and occupiers, and absolving the occupier from loss in case the owner neglected to conform to the conditions of the Act.

Mr. Dampier said he thought the proposed amendment would open a door to all sorts of difficulties. A proprietor who had let his premises without any stipulation that they were to be used as a jute warehouse, or for any other particular purpose, would have no authority to interfere with his tenant unless a specific section were introduced in the law, giving him authority to do so.

Mr. Robinson said, he thought the insertion of the words proposed would make the law operate harshly upon the landlord, for how was he to prevent the occupier from using the premises as a jute warehouse? He could not go beyond the terms of his lease, and he would have no power whatever over his tenant during the currency of the lease, and could not interfere in any way with the tenant's action.

Mr. Wyman said it would be optional with the owner to effect these improvements, but they would manifestly effect a great improvement in the owner's property; while on the other hand they would be impossible conditions for the tenant to fulfil, and if the owner did not effect the necessary improvements, the tenant's business would be shut up. If the owner did not comply with the provisions of the Act, and render the premises effective against fire, the tenant's lease ought to be cancelled, as the law said that he must not carry on his business except under certain conditions.

Mr. Bernard said that the hon'ble mover of the amendment considered that the provisions of this Bill would operate with hardship on the occupiers of existing jute warehouses, and he proposed to transfer to owners the duty of fulfilling the requirements of the law. But such a provision might press very hardly upon owners. Suppose the premises in which 100 or 200 drums of jute were stored was worth Rs. 500: the owner would probably have to convert the godown into a brick-house, with an iron or masonry roof and iron beams, for the Justices would have power under the Bill to impose on existing warehouses all ~~the~~ conditions which were applicable to new warehouses; and he might have to expend thousands of rupees on such a work, even though the occupier's tenancy

might have but two years to run. He considered it would never do to throw on the owners of small warehouses of that kind the obligation of putting them into a fit condition for the storage of jute.

His Honor the President thought the hon'ble member should bring on this motion as a separate provision after having given due notice thereof.

Mr. Wyman then by leave withdrew his motion, and intimated his intention to adopt the suggestion of the President.

The section was then agreed to; and so also was section 12.

Section 13 was agreed to.

Section 14 provided a penalty for introducing in a jute warehouse fire or lucifer matches "*in a manner which is not authorized by the conditions of the license granted for such place.*"

Mr. Wyman moved the omission of the words printed in italics. He thought that that provision overlooked the provision in section 7, which prescribed that no artificial light or lucifer matches should be introduced in a jute warehouse, and that no person should smoke therein; but the section under consideration permitted them to do so in a particular manner. He thought it very undesirable that it should be permitted at all, and it ought to be distinctly understood that no one should be allowed to smoke or introduce lucifer matches in a jute warehouse.

Mr. Bernard observed that the Council had already provided for the introduction of fire by the clause which related to engines and furnaces, for by the interpretation clause "warehouse" included the land or yard belonging to it; and it would not do to provide by the present section that no fire should be introduced in a jute warehouse.

The Advocate-General said there did seem to him to be some objection to the section as it stood. He thought the objection would be met by the omission of the words suggested by the hon'ble member, and the introduction of the words "in contravention of his license" at the beginning of the section, after the word "whoever."

Mr. Wyman's and the Advocate-General's amendments were then agreed to.

Section 15 was agreed to.

Section 16 authorized "the Justices" to frame bye-laws for certain purposes.

Mr. Wyman said this section gave the Justices, or as the Act might be interpreted, the Chairman of the Justices, power to frame bye-laws. He thought that it was by an oversight that the power given under this section was not restricted to the Justices *at a meeting*. He thought it was desirable, in matters concerning public rights and interests, that this power should be conferred on the body of Justices and not on the Chairman. As the section stood, it would be quite possible for the Chairman to frame bye-laws on his own will and responsibility. He would therefore move the insertion of the words "at a special meeting" after the word "Justices."

Mr. Schalch said section 218 of Act VI of 1863 enacted that it should be lawful for the "Justices" from time to time to make bye-laws, and a subsequent section provided that such bye-laws should not have any force or effect until they

were approved by the Lieutenant-Governor. Mr. Schalch did not see why the Council should make a distinction as regards bye-laws framed under this Bill. He thought the provision in the Bill was sufficient, for although the Chairman was authorized to exercise all the powers of the Justices not directed to be exercised by the Justices *at a meeting*, it was competent to the Justices by resolution to direct that in matters of this kind the Chairman should not exercise their powers. Practically there had been no bye-laws which were not made by the Justices at a meeting.

His Honor the President said that he understood the Council at the last meeting had thought fit to restrict many of the powers conferred by the Bill to the Justices at a special meeting. It did therefore seem inconsistent, if we required the Justices at a meeting to lay down a scale of fees, to allow the most important power of framing bye-laws to be exercised otherwise than at a meeting.

Mr. Wyman said he could not admit the force of the argument that because the previous enactment did not provide that the power of making bye-laws should be exercised only by the Justices at a meeting, we should not make a distinction in that respect in this Bill. He thought that such a distinction should be made as regards the important power of framing bye-laws. The Council had affirmed the principle of restricting certain other powers under this Bill to the Justices at a meeting, and he submitted that there was every reason that the same amendment should be made in this section in accordance with that principle.

The question being put, the Council divided:—

| Ayes—6. | Noes—6. |
|---|---|
| Mr. Wyman. | Mr. Colvin. |
| Moulvie Abdool Luteef | Baboo Digumber Mitter. |
| Mr. Bernard. | Rajah Joteendro Mohun Tagore. |
| „ Dampier. | Mr. Robinson. |
| The Advocate-General. | „ Schalch. |
| The President. | „ Bayley. |

The numbers being equal, the President gave his casting vote with the ayes.

The motion was therefore carried.

Mr. Wyman then moved that paragraph (1), which was as follows, be left out: "giving of gratuities to persons who have given notice of fires." He was aware that that clause was in the English Act, where it was at one time considered desirable to give gratuities to persons who might afford early intimation of the occurrence of fires, but he understood that that provision was now felt to be unnecessary. He believed that the provision was introduced for affording assistance to insurance companies, who were largely interested in the prevention of fires. There was therefore very good reason for the introduction of such a provision in England; but a like state of things did not apply to Calcutta. The fire-brigade here would be under the superintendence of the municipality, who had no personal interest. He would direct the attention of the Council to a case which occurred not many weeks ago in which a man was convicted

of having set fire to buildings with the view of obtaining a reward for giving early intimation of the occurrence of the fire, and it was ascertained that the man had earned a large income in this way. It was quite possible therefore, if a gratuity was given for early intimation of fires, that low classes of men here, such as coolies and the like, would set fire to houses with the view of obtaining a reward. Some years ago, when the city was filled with thatched villages, it was almost a constant occurrence for fires to take place, and it was believed that the *gharamees* set the houses on fire in order to be employed in rebuilding them. The omission of this provision would avoid the inducement to evil disposed persons; and as Mr. Wyman could not see any necessity for giving gratuities, and the provision might have some such undesirable result as that which he had referred to, he would wish to avoid the possibility of its having any such result. Any rightly disposed person would give notice of the occurrence of a fire without expecting a reward, and the omission of any provision of the kind would have the effect of making the police feel that it was incumbent upon them to keep a constant watch over the town, and that they would themselves be held responsible for giving early intimation of fires.

MR. SCHALCH pointed out that the next amendment, of which the hon'ble member had himself given notice, would admit of rewards being given for early notice of the occurrence of fires. It was, besides, in the power of the Commissioner of Police to give rewards when he thought it proper to do so. Mr. Schalch thought it very desirable that when a man gave early notice of the occurrence of a fire he ought to get some reward.

MR. WYMAN said that with regard to the amendment which he proposed to move in paragraph (2), he might observe that that paragraph gave power to confer rewards in exceptional cases. His objection was to the giving of gratuities for simply giving notice of fires.

The Council then divided:—

| AYES—4. | NOES—8. |
|---|---|
| Mr. Wyman | Rajah Joteendro Mohun Tagore. |
| Baboo Digumber Mitter. | Mr. Colvin. |
| Mr. Bernard | „ Robinson. |
| „ Dampier. | Moulvie Abdool Luteef. |
| | Mr. Bayley. |
| | „ Schalch. |
| | The Advocate-General. |
| | The President. |

The motion was therefore negatived.

MR. WYMAN said the object of his amendment in paragraph (2) was two-fold. This clause appeared to him to provide for the awarding of gratuities in exceptional cases—a power to give gratuities not simply to those giving timely notice of fires, but to other persons deserving of reward. He would illustrate his meaning by an occurrence which had taken place not long ago in England, when it happened that a fireman lost his life, and another person, who was not an officer of the fire-brigade, was seriously injured; this person acted in a most courageous manner, and the result was that he died from the effects of the injuries he had received: the papers were full of his courage and bravery in risking his life

when he himself was not a member of the fire-brigade. The fireman's widow and children were provided for; but for the family of the other man, who lost his life under these distressing circumstances, no provision of the kind was made, and his widow and children were left to be provided for by public subscription. The result was that a small amount was subscribed amongst the class to whom the man belonged (the poorer class), but a quite insufficient amount, showing the necessity of some legal provision for such cases. There was no question of the relative bravery of the two men—the man not in the brigade was said to have exceeded the fireman in courage and bravery; yet the provision for one man's family was secure, whilst the other was left to public charity. It might happen that a similar case might occur in Calcutta, and if it did, this provision of the Bill would not allow of any assistance being given in such a desirable case.

The amendment was agreed to, and the section as amended was passed.

Section 17 prescribed the powers of the fire-brigade in cases of fire.

MR. WYMAN moved the addition to the section of the following words:—

"The Chief Officer on the spot in charge of the brigade may verbally nominate and depute one or more officers of the brigade to act at a distance, and such officer or officers shall have, for the time being, the like powers as the Chief Officer himself possesses under this section."

He said he did not know whether the practical effect of the amendment would make much difference, but he believed that literally it would make a great difference. Under the section as it stood, the only person who could exercise the powers conferred on the brigade was the Chief Officer on the spot. Mr. Wyman would leave the learned Advocate-General to say whether he (Mr. Wyman) was correct in saying that nobody but the Chief Officer on the spot could exercise those powers. If Mr. Wyman was right in his construction, then he thought that the Chief Officer should have authority to delegate his powers to some other officer of the brigade whom he might direct to act at a distance. A fire might extend over a distance of half a mile; the Chief Officer would probably be at the centre, but there might be urgent necessity to put down the fire at a place half a mile off, and Mr. Wyman thought that under such circumstances the Chief Officer ought to have power to delegate his authority to another officer of the brigade. It might frequently happen that in cases of large fires, unless this power was given, the conflagration would extend with frightful rapidity. Unless the learned Advocate-General was of opinion that such a power could be exercised under the section as it stood, Mr. Wyman thought the words which he proposed should be added to the section.

THE ADVOCATE-GENERAL said that the section did certainly seem to limit the exercise of the powers conferred under it to the Chief or other officer on the spot; but whether it was desirable to give those powers to other officers deputed by the Chief Officer was a question for the consideration of the Council. As the section stood, the only person who could give orders was the Chief or other officer on the spot.

MR. ROBINSON said, he thought the amendment unnecessary, as the words of the section were very general, and gave power to the Chief Officer by himself *or his men* to break into or through, or pull down any premises, &c.

MR. WYMAN said, he presumed that the Chief Officer would not know what was occurring at one end of the fire, and things that were necessary to be done and which he would do if he were aware of the circumstances, would perhaps remain undone, as a junior officer would probably not like to take the responsibility of acting on his own authority.

MOULVIE ABDOOL LUTEEF said, he considered that the powers already proposed to be given to the Chief Officer regarding the pulling down of houses were very serious, and he therefore thought that it was not further desirable to allow the chief officer to delegate such powers to a person who held a position inferior to his own.

The amendment was then carried after the following division, and the section as amended was agreed to:—

| AYES—7 | NOES—5. |
|---|---|
| | Mr. Colvin. |
| Rajah Jotecndro Mohun Tagore. | Baboo Digumber Mitter. |
| Mr. Wyman. | Mr. Robinson. |
| „ Schalch. | Moulvie Abdool Luteef. |
| „ Bayley. | Mr. Bernard. |
| „ Dampier. | |
| The Advocate-General. | |
| The President. | |

Section 18 related to inquiries into the origin of fires.

MR. WYMAN said the process provided by this section appeared to him to be very circumlocutory. It required, first, that the Chief Officer should ascertain the facts, then that he should make a report to the Justices, then that he should summon witnesses, and if he were not able to procure their attendance, then he was to apply to the Magistrate for assistance to enable him to do so. It seemed to him that instead of all this roundabout way of going to work, the proper officer to conduct the inquiry was the Coroner, who had the power of doing all these things which it was proposed should be done by the Chief Officer; and by his knowledge and experience the Coroner was probably a fitter officer for the conduct of such inquiries than the Chief Officer, who after all would have to go to the Magistrate for assistance in procuring the attendance of witnesses. Mr. Wyman thought therefore that the employment of the Coroner for the investigation of such inquiries would be an advantage to the public, especially as he would have the assistance of a jury. Mr. Wyman would therefore move that all the words after the words "report thereon to the" in line 6 be omitted, and that the words "Coroner, who shall at his discretion hold an inquest into the cause of such fire," be substituted for them.

MR. BERNARD said he thought that the Chief Officer of the fire-brigade was the proper person to conduct the investigation into such inquiries. If the duty were made over to the Coroner, who was also a Magistrate, the Council would have to consider whether the inquiry should be made with the aid of a jury, or how. Such inquiries were not in the nature of judicial investigations; they were merely to be undertaken with the object of making a report to

the Justices. He thought that these investigations would be better, more quickly, and more satisfactorily conducted if they were left to the Chief Officer of the fire-brigade.

His Honor the President said, he had not had time to give so much attention to all the amendments on the paper as he would have wished, but he thought it very desirable that these inquiries should be made by a responsible public officer; his apprehension was that the inquiry should be of a judicial character, and should be made by a judicial officer, and he thought the Magistrate might make the inquiry.

The Advocate-General said in England there was an obsolete jurisdiction in the Coroner in such cases, but he believed it had been very seldom exercised. The functions, powers, and duties of Coroners in India were defined by the Act of 33 Geo. III, c. 52, s. 157; but the operation of that statute in India had been repealed by the Coroner's Act of 1871, and he had now no such jurisdiction here: that he had it previously, was even doubtful. By the Coroner's Act of 1871 his functions and duties were defined, and these inquests into the origin of fires was no part of his duty; he had simply to hold inquests upon deaths. The Advocate-General thought, moreover, that there was no good ground for investing the Coroner with these powers now; but it seemed to him very desirable to have an inquiry before a Magistrate, who was a responsible judicial officer. By requiring the Coroner to hold these investigations, his duties would be greatly increased, and his salary would have to be increased proportionately.

Mr. Bayley said, there appeared to him to be another difficulty in the way of appointing the Coroner to make these inquiries. The Coroner and his jury would only have jurisdiction in Calcutta; the Chief Officer of the fire-brigade, on the other hand, would exercise jurisdiction in the suburbs as well as in Calcutta. If an inquiry was to be held in the suburbs, it must be held either by the Magistrate or the Chief Officer of the fire-brigade.

After some further conversation, Mr. Wyman's motion was put and negatived.

On the motion of the President the words "Magistrate of Police of the town or division of the town in which such fire shall have occurred, and the said Magistrate shall have power to summon witnesses and take evidence in order to the due ascertainment of such facts," were substituted for the words proposed to be omitted; and the section as amended was agreed to.

Section 20 empowered the "Commissioner of Police" to grant licenses for the sale or manufacture of fire-works.

Mr. Wyman moved the substitution of the word "Justices" for "Commissioner of Police." He said, his object in proposing this amendment was because he thought it was the duty of the police to control the letting-off of fire-works in the town, and not to grant licenses for their sale or manufacture. He proposed that this power should be exercised by the Justices, and not by the Justices "at a meeting," because it was not necessary for the Justices at a meeting to grant these licenses. It might be urged that the Commissioner of

Police and the Chairman of the Justices were one and the same person; but that might not always be the case, and he therefore thought the amendment he proposed should be made.

His Honor the President said, that it appeared to him that these were executive functions, which ought properly to be exercised by the Commissioner of Police, whether the Commissioner of Police and the Chairman of the Justices were one officer or not; and the section was designedly drawn with that view.

The motion was then negatived, and the section passed as it stood.

Sections 21 and 22 were agreed to.

Section 23 gave the Commissioner of Police power to withdraw licenses granted by him under the Act.

Mr. Wyman moved the substitution of the words "Justices of the Peace at a special meeting" for the words "Commissioner of Police." He said, he proposed this amendment on the ground that the Commissioner of Police should not have the power to suspend any license. He thought that even if the power of granting a license was vested in the Commissioner of Police, the power of withdrawing it should be vested in the Justices at a meeting. The Council had affirmed the principle that the granting of these licenses should be in the hands of the Commissioner of Police, and it might be urged that there was no reason why the power to withdraw them should not be vested in the same officer. But Mr. Wyman thought that there was a great difference between the power to grant a license and the power to withdraw it. He thought that when a license was once granted, the power to withdraw it should be vested in a competent body, and not in the person who granted it. The arbitrary exercise of such a power might result in serious injustice to an individual, and therefore he thought we could not surround the power of withdrawal with too many safeguards.

Mr. Bayley said, that he could not conceive any worse body to try these petty cases than the Justices in special meeting. He would always have these cases exercised by an executive officer of high standing, like the Commissioner of Police. He thought that in the early parts of the Bill the Council had gone a great deal too far in insisting on the Justices at a meeting deciding all these points of executive detail.

The Advocate-General said that he thought the withdrawal of a license of this kind was entirely an executive matter; the granting of these licenses was entrusted to the Commissioner of Police, and therefore the power of withdrawing them ought to be entrusted to the same authority.

The motion was then negatived, and the section was passed as it stood.

Sections 24 and 25 were agreed to.

Section 26 provided that Insurance Companies should contribute, towards the expenses of the fire-brigade, a sum at the rate of half a rupee for every "thousand" rupees of the gross amount insured by it in respect of property insured from fire.

Mr. Bernard explained that the rate paid in London was £35 for every million sterling of property insured. As the premia paid in Calcutta were at

a somewhat higher rate than the premia paid in London, it was considered that a fair rate to be paid here by Insurance Companies would be £50 in every million sterling, which would come exactly to half a rupee in every "ten thousand" rupees. MR. BERNARD would therefore move the insertion of the word "ten" before the word "thousand."

The motion was agreed to, and the section as amended was passed.

Sections 27, 28, and 29 were agreed to.

Section 30 empowered the Lieutenant-Governor, on the recommendation of the "Justices," to declare the warehousing of any other substance to be subject to the provisions of this Act.

On the motion of MR. WYMAN, the words "passed by resolution" were inserted after the word "Justices," so as to make the recommendation of the Justices an act of the Justices *in meeting*.

On the motion of MR. COLVIN, the following section was introduced after section 30, and the latter part of the first paragraph of section 15, requiring the Justices to make an annual report of the manner in which the provisions of Parts III and IV of the Act had been carried out, was omitted:

"The Justices and Municipal Commissioners respectively shall make a report to the Lieutenant-Governor, as soon as conveniently may be after the 31st July next, showing how the provisions of this Act have been carried out, and specifying the jute warehouses in respect of which licenses have been granted: and such report shall be forthwith published in the *Calcutta Gazette*. And thereafter the Justices and Municipal Commissioners shall make a like report once a year at such time as the Lieutenant-Governor shall direct."

Section 31 related to the power of arrest.

MR. WYMAN said, this section provided for the arrest of a person whose name and address were unknown. But he thought provision should also be made for the arrest of a person whose name and address were known, but who the arresting officer might have reason to believe was about to place himself beyond the jurisdiction of the Magistrate. It appeared to him very undesirable that dishonest persons who committed serious offences should be allowed an opportunity of placing themselves beyond the jurisdiction, and thus escape punishment for their offences. He therefore moved the insertion of the words "or if for any reason his appearance on process be improbable," after the word "unknown" in line 5.

THE ADVOCATE-GENERAL said, surely the law upon this point was strong enough as it was. If the address of a person who had committed an offence was unknown, he would be taken into custody; but if it was known, why not allow the law to take its course in respect to offences under this Act as in all other cases? On the other hand, by the amendment proposed, you would leave it to the police officer to say that it was probable that the offender would abscond. In nine cases out of ten the police officer would say that the offender's appearance on process was improbable. The Advocate-General did not see any reason why an exception should be made as to offences committed under this Act.

The motion was then negatived.

MR. WYMAN also moved the addition to the section of the words "provided that the arresting officer shall be a sworn constable."

After some conversation this amendment was also negatived, and the ection was passed as it stood.

Sections 32 and 33 were agreed to.

MR. WYMAN moved the introduction of the following new section after ection 33:—

"It shall be lawful for the Lieutenant-Governor of Bengal to appoint a court or courts in hich Justices of the Peace for Calcutta may sit and determine in a summary manner cases under e several Municipal Acts referred to in this Act and under this Act itself which may be termined by a Justice of the Peace."

He said it appeared to him that a section of this kind was necessitated by e form in which the interpretation of the word "Magistrate" now stood in e Bill. By section 2 "Magistrate" included a Justice of the Peace for lcutta, and any person exercising all or any of the powers of a Magistrate. y Act IV of 1866, section 22, the Lieutenant-Governor had power to define e number and extent of police districts, and establish a police court in and r each of such districts. It also empowered the Lieutenant-Governor to point a sufficient number of fit persons as Magistrates of Police for the town, ho might sit and act as Magistrates in any of the said police courts. But if e present Bill was passed without some such provision as that which he had ggested, the Justices who had power to act as Magistrates under this Bill ould not be compelled to sit in any court at all: they might sit in their own uses, and exercise their powers under this Act. But, apart from what was e case as regards former Acts, the Council had to consider whether the stices would have authority to sit in a court authorized by the Government. Mr. Wyman was correct in his interpretation of the law, he would press the endment of which he had given notice.

HIS HONOR THE PRESIDENT observed that the amendment proposed would ect the whole jurisdiction of the Justices of the Peace, and its operation would t be confined to cases tried by them under this Bill.

MR. SCHALCH said, when Justices of the Peace were first appointed under t VI of 1863, it was supposed that a Justice could in the course of his morning lk exercise his jurisdiction and summarily convict any person whom he might d committing an offence. Mr. Schalch was not quite sure whether a regular erence was made on the subject, but he believed that it came to be understood t a Justice of the Peace could not do so unless he was acting judicially, and t he could not act judicially unless he was sitting in a regularly constituted urt. He believed that the Justices who had exercised judicial powers always in the police court.

MR. WYMAN said that he had not supposed for a moment that the general erpretation would be other than what had been stated, that a Justice of the ace was only a Justice when he was sitting judicially in the police court. seemed to be supposed that because that had been the general interpretation, matter should be left to be decided by the good sense that had hitherto vailed; but it seemed to him that that was not the way in which a law uld be framed: on that principle he thought a great many laws might be

done away with. As he could not accede to such a doctrine, he thought that some such amendment as that which he had proposed was necessary.

His Honor the President said that it seemed very clear to him that the hon'ble member's object was to amend the law on the subject of the jurisdiction of Justices of the Peace in all matters. His Honor thought that that was not a matter that was specially connected with this Bill, and that if the hon'ble member wished to raise the question, he should do so by the introduction of a distinct and separate measure.

The motion was then by leave withdrawn; but Mr. Wyman stated that he considered the matter of such importance that he should avail himself hereafter of His Honor the President's permission to introduce a Bill to amend the existing law.

Section 34 and the postponed section 2 were then agreed to.

The postponed section 3 was passed after verbal amendments.

The postponed section 1 and the preamble and title were agreed to.

On the motion of Moulvie Abdool Luteef the words "or the Municipal Commissioners at a meeting respectively" were inserted after the word "Commissioners" in line 9 of section 10, by which section the Municipal Commissioners of the Suburbs and of Howrah were invested with the same powers as the Justices under the Act.

His Honor the President said that as the Council had now gone through all the clauses of the Bill, he thought it was desirable that the Bill should be reprinted, and that the Council should have another opportunity of considering the Bill as a whole.

The Council was then adjourned to Saturday, the 10th instant.

*Saturday, the 10th February* 1872.

Present:

J. Graham, Esq., Advocate-General, *presiding.*
V. H. Schalch, Esq.,
H. L. Dampier, Esq.,
A. R. Thompson, Esq.,
S. C. Bayley, Esq.,
C. E. Bernard, Esq.,
Moulvie Abdool Luteef, Khan Bahadoor,
B. D. Colvin, Esq.,
T. M. Robinson, Esq.,
Baboo Digumber Mitter,
and
Rajah Joteendro Mohun Tagore, Bahadoor.

## JUTE WAREHOUSES: FIRE-BRIGADE.

Mr. Bernard moved that the Bill to amend the law for the registration of jute warehouses, and to provide for the establishment of an efficient fire-brigade, be considered in order to the final settlement of its clauses. He said the

auses were settled by the Council at its last meeting, but the Bill was not then assed, as several important alterations were made on that day, and it was onsidered expedient that the Bill should be republished before being passed. esterday and to-day notice had been given of some further amendments hich were to be proposed, and he therefore moved that they should be taken ito consideration in the order in which they stood.

BABOO DIGUMBER MITTER said, that the necessity of the first amendment f which he had given notice would become apparent when it was considered iat the time for putting the Act into operation would be entirely contin- ent on the completion of the inspection and submission of the report of the elect Committee of the Justices provided for under section 5 of the Bill. The umber of jute warehouses scattered over the town was so large that the reliminaries might not be gone through by the 15th of July next, the date xed for the submission of the Committee's report. It was to remove all ıcentives to undue haste in the work of inspection and inquiry, and to its ·ing perfunctorily performed, and licenses in respect to existing warehouses ·ing wantonly withheld, that he thought some words of the kind he proposed ere necessary. He would therefore move the substitution, in lines 1 and 2 of ction 3, of the words "such date as the Lieutenant-Governor may appoint id notify in the *Calcutta Gazette*," for the words "the 31st July next after the assing of this Act."

MR. COLVIN said, it was incumbent on him to oppose this amendment. The nendment appeared to him to strike at an essential principle of the Bill, iat within the shortest reasonable time existing jute warehouses should be ·ought within the operation of this Act. The measure had been introduced the Council as a somewhat urgent one, as dealing with a question which ·manded early and prompt legislation. It appeared to him most necessary at some early date should be fixed for the commencement of the Act, and in ·ing the 31st July he considered that the earliest rather than the latest ·sirable date had been fixed. Any one acquainted with the jute trade would gree with him that no more reasonable or more practicable date could be ·ed than the end of the annual jute season; and it would be more con- ·nient to the owners of jute warehouses that the Act should take effect from at date. He would venture to say that the practical result of the amendment hich had been proposed would be to defer the commencement of the operation the Act to another jute season. He was sure that the hon'ble member mself did not intend that his amendment should have that effect. Although r. Colvin was not willing that the operation of the Act should be precipitated, thought that the 31st July next was not too early a date to fix for the mmencement of the Act, and he did certainly object to its being put off an indefinite date. The hon'ble member had based his objection to the date ·ed for the commencement of the Act on the ground that the work of inspec- ·n could not be properly done within the time allowed; but Mr. Colvin isted that the Council would support the decision of the Select Committee adhering to the date fixed by them.

The motion was then put and negatived.

BABOO DIGUMBER MITTER moved that in line 8 of section 4 the words "person using the same" be substituted for the words "owner or occupier thereof." He said the Council would observe that the penalty on default being made in taking out a license was enforceable only against the occupier or person using the warehouse; he did not therefore see the necessity of requiring the owner of the premises to take out a license when his non-compliance with the requisition could not be enforced by a penalty: he would make the occupier or person using the premises only liable to take out a license.

MR. DAMPIER said that perhaps the hon'ble member did not observe that the provision to which he referred was permissive: the section said that no warehouses should be used for the storage of jute or cotton unless the owner *or* occupier took out a license. It did not impose any liability on the owner, but simply enabled the owner of the premises to take out a license instead of the occupier, if he did not do so.

THE PRESIDENT observed that the license must be taken out by either the owner or occupier: he thought the hon'ble member's explanation satisfied the objection raised by the hon'ble mover of the amendment.

The motion was then put and negatived.

BABOO DIGUMBER MITTER moved the insertion, after "thereof" in line 17 of section 6, of the following words:—

"In case the said person is unwilling to comply with the said restrictions and conditions, he may serve a notice upon the owner, with a copy of the certificate annexed thereto, calling upon him to comply with the terms thereof, and in case the owner declines or fails to carry out the same within a reasonable time, the lease of the jute warehouse (provided that the terms thereof shew that the said warehouse was leased expressly for the storage of jute or cotton) shall thereupon stand cancelled."

He said this was simply an attempt at a solution of the complications that would necessarily arise in the relations of landlord and tenant on the passing of this Act. He was, however, very far from being satisfied that the amendment he proposed would meet the whole difficulty, but it would go to some extent towards it, and he left it entirely to the Council to decide the matter.

MR. BERNARD said, he thought this amendment was an extremely important one, and he agreed with the hon'ble President that if the principle of the amendment were accepted by the Council it would be possible to put the amendment in a better form of words than that in which it now stood. For his own part he thought that a clause of this scope would unnecessarily commit the Legislature to interference with existing agreements of this particular kind. As the amendment stood, it would only affect those leases which by their terms expressly showed that the lease was granted for a jute warehouse. He was not sure (nor, he believed, was the hon'ble member,) whether such a clause existed in many leases: it probably did not exist in many leases; but until inquiry was made, neither the hon'ble member nor the Council could say. If such a clause did not exist in the leases, then the clause would simply become inoperative; but if it did, then this amendment would alter the conditions of all existing leases, and it would throw the burden of putting jute warehouses into

rder on the owner, and take it away entirely from the occupier. Mr. Bernard hould be very glad if the President would see fit to give the Council the enefit of his advice on the legal question; and if the principle of the amendent which the hon'ble member proposed was accepted by the Council, Mr. ernard thought the Bill ought not to be finally passed that day with an nportant amendment of this kind. The consideration of the Bill would have ) be postponed, so that the amendment might be carefully considered and ie people interested in it might have an opportunity of expressing their pinion upon it.

THE PRESIDENT said that this was a very important amendment, and as it ffected the rights of property to a great extent, he thought it should not be isposed of in a hasty way. The notice of amendment had only reached him iat morning, and he had not had sufficient time to consider the matter carefully; ut the question of principle being now before the Council, he thought it would ) fair to consider it. He believed there were very few instances in which it as expressed in the lease that the house and premises should only be used for ie storing of jute; but he understood there were many leases in which there as the mutual understanding between the parties that the premises were to be sed for a jute screw-house. He did not wish to give an off-hand opinion upon ie subject, but he thought that in the case of a lease in which it was pressly agreed that the premises should be used only as a jute warehouse, id a supervening law came in to the effect that it should not be so used in s existing state, whereby it became impossible for the tenant to get the benefit his lease, the contract would be held to be dissolved, inasmuch as a beneficial joyment would be rendered impossible by the act of the law. But there were any other cases in which, without any such express words in the lease, or ords necessarily leading to that conclusion, it might be well understood that the ject of the party taking the lease was for the purpose of a jute warehouse: e parties in fact did not contemplate a new law requiring other conditions, volving an increase of expense in putting the premises into a condition which e existing law did not require. Therefore, if the tenant was prohibited from rrying out the purposes for which he took the lease, the President thought it as only just that he should in some way be protected. On the other hand, as is Act stood, the landlord might hold the tenant to his lease, notwithstanding at he might not be able to carry on the purposes for which he took the emises, and the Act made no provision that it should be obligatory on the ndlord to permit the alterations requisite to qualify the premises for a license. nder these circumstances it did seem fair that some arrangement should be ade to adjust these differences. The question was, how was that to be done. he principle, he thought, of a law which interfered and imported particular nditions in order to carry on trade, should be that the landlord should pay the penses of the alterations, and that he should be entitled to some interest upon e money which he was compelled to lay out; and also that it should be bligatory on the landlord, in cases where the premises were in reality let for e purpose of a jute warehouse, either to make or allow the tenant to make the

necessary alterations in the premises which were required by the law to put them in a proper state for the carrying on of the business. The result would be that the landlord would be compelled to allow the alterations to be made at his expense, and that the tenant should pay something by way of interest for that expenditure.

MR. DAMPIER said that he thought sufficient time should be given for the consideration of such a clause, and that the Council should not be called upon to decide the matter at once.

MR. BERNARD said he thought that it would be well to take the sense of the Council whether they wished to make an amendment of this kind at all: if it should be carried in the affirmative, it would be on the understanding that the Bill should not be passed that day, and that the wording of the section should be well considered and laid before the Council as early as possible.

MR. BAYLEY said that the alternative of rejecting the amendment merely involved leaving the difficulty to be dealt with by the Courts under existing principles of law, instead of introducing a new principle; and if he had understood the hon'ble President rightly, and it was the case that very few leases did contain a special clause showing that the warehouse was leased expressly for the storage of jute or cotton, then the amendment would be very rarely operative, and the practical result would be precisely the same, and would leave the whole question for decision under the law as it stood. He was not sure that it would be worthwhile to introduce a questionable interference with existing rules of law merely for this object. In the case of the destruction of a jute warehouse by fire, the tenant would bear the loss of the remainder of his lease, and the owner would suffer the loss occasioned by the fire. He thought this was an equitable principle. He thought therefore that there was some danger in the Council laying down a general principle of law which was to deal with leases of different periods of duration, some of which were said to be for forty years: while the great majority of these leases were, he believed, for short terms, mainly from year to year; and in respect to these small leases the principle would be nugatory if not injurious. If we allowed a notice of six months to be given to the landlord, by that time most of the leases would be at an end; and in the case of very long leases, the principle of ultimate private adjustment would hold good whether the loss, in the first instance, fell partly upon the owner and partly upon the occupier, or wholly on the occupier, or wholly on the owner: but the principle would operate very differently in the case of long and of short leases. On the whole Mr. Bayley thought it would be well to leave the matter as it stood; if there was any legal difficulty, one or two cases would settle it.

MR. DAMPIER said that if this question was to be put to the vote, it was necessary to draw the attention of the Council to a point as to which the remarks of the hon'ble member in charge of the Bill seemed to him (Mr. Dampier) to be not quite accurate. The hon'ble member had said that the effect of the amendment as it now stood would be to throw the whole cost and responsibility on the owner, instead of on the occupier, but it appeared to Mr. Dampier that

ıere was a self-adjusting limit, which he thought would work somewhat in ıis way. If the lease was for a short term the occupier would not make the lterations himself; he would call on the owner to do so. It would be in the ɔtion of the owner to make them or not. He might say to the occupier, "If ou do not choose to incur the expense, throw up your lease." But on the ther hand if the lease was one of those forty years' leases which had been ɛferred to, and if the owner thought that it would be worth the occupier's hile to incur the expense, the owner would refuse to make the alterations, ıd leave the expense to be borne by the occupier. He thought the matter ould adjust itself by the circumstances of each particular case.

MR. ROBINSON said that he was inclined to think that the best course would ɔ to confine this Bill to the simple object of securing the safety of the town om fire. As far as his experience went, he did not think that the difficulty of ıe landlord and tenant adjusting these matters between themselves would be ɛry great. From the nature of leases in Calcutta he did not think that those ifficulties were worth much attention, and he could not foresee the slightest convenience in leaving the landlord and tenant to arrange between themselves ɔw they were fairly to meet the provisions of the law. He believed any attempt ɔ do so would only lead to confusion and difficulty; whereas, if the parties were ft alone, no such difficulties would arise.

MR. SCHALCH said, if it were competent to him to move an amendment, he ould suggest that the section should stand over for consideration till the ɛxt meeting of the Council. Those who were in favor of such an amendment ɔuld vote for it, and if the amendment were carried, a section might be so ɛpared in the interval before the next meeting of the Council as to meet ıe opinion and views which had been expressed by the President. Such a ɔurse would bring the question before the Council in a more complete shape, ıd the matter could then be fairly discussed and decided.

THE PRESIDENT said that he thought the best course would be to take the ɔtes on the substantive motion first: if that motion was affirmed, the question ɔuld then be postponed for further consideration at the next meeting of the ɔuncil.

The Council then divided:

| AYES—3. | NOES—8. |
|---|---|
| Baboo Digumber Mitter. | Rajah Jotcendro Mohun Tagore. |
| Mr Dampier. | Mr. Robinson. |
| The President. | Mr. Colvin. |
| | Moulvie Abdool Luteef. |
| | Mr Bernard |
| | Mr Bayley |
| | Mr. Rivers Thompson. |
| | Mr. Schalch. |

The motion was therefore negatived.

On the motion of Mr. Bernard two verbal amendments were made in ction 6.

MR. BERNARD moved the insertion, after the the word "suspend" in line of section 9, of the words "for such time as they shall think fit." He

said that by this section the Justices had the power to suspend any license, but the section did not say for what period the suspension should continue. It seemed right that if the Justices had the power to suspend a license, they should also have power to determine for what period the suspension should take effect.

The motion was agreed to.

In section 13, MR. BERNARD moved the insertion of the words "or cancelled" after the word "refused" in line 6; and of the words "or during the time for which such license shall have been suspended" after the word "thereof" in the same line. He said these amendments were introduced to give effect to section 9. As section 13 stood, a penalty was imposed for using a jute warehouse after the refusal to grant a license. But if the Justices had power (as they would have under section 9) to cancel a license which they had granted, or to suspend it for a certain time, it seemed necessary that some penalty should be imposed for a breach of the order cancelling or suspending the license. These words were therefore proposed to be inserted with that view.

The motions were severally agreed to.

On the motion of MR. BERNARD a verbal amendment was made in section 14.

MR. BERNARD moved the introduction, at the end of clause (3) of section 16, of the words "not being members of the Calcutta and Suburban Police Force." He said that the object of the amendment was this. As the section stood the Justices at a special meeting had the power to frame bye-laws, amongst other things, for the training, discipline, and good conduct of the members of the fire-brigade. It had been pointed out that if the fire-brigade was to be worked cheaply, and the town was not to be heavily burdened for its support, then it would naturally happen that the European and Native members of the Calcutta police should be the persons appointed to work it. As the Council were aware, the police force of Calcutta was not managed directly by the Justices, but by the Commissioner of Police under the local Government, and the Commissioner of Police would take care to see that the officers of police appointed to the fire-brigade attended to their own police duties. If that were to be done, it would be necessary to make many members of the police force also members of the fire-brigade. For instance, the Chief Officer might be an officer of the police; if he were not a police officer, it would be necessary that he should be well paid for the responsible position he would hold, and the large powers he was authorized to exercise under section 17. He would naturally be idle the greater part of the year, for fires were not now of frequent occurrence in Calcutta, and in certain seasons he would have no duties at all to perform. The time of a highly paid man would therefore hardly be fully occupied. While if the Chief Officer was a police officer, and if the Justices passed these bye-laws for the training and discipline of the brigade, he would have to serve two masters, and would thus be placed in a difficult position. It seemed better, therefore, that the members of the Calcutta police force, who should also be members of the fire-brigade, should not be subject to the bye-laws of the Justices.

The motion was agreed to.

MR. BERNARD moved the omission from section 18 of all the words after ıe word "Magistrate" in line 6, and the substitution for them of the words having jurisdiction in the place in which such fire shall have occurred, and ıe said Magistrate, in any case where he may see fit, shall summon witnesses ıd take evidence in order to the further ascertainment of such facts." He id that the words which he proposed to omit were inserted at the last meeting the Council with the object of taking the conduct of the investigation as to e cause of a fire from the hands of the executive and imposing that duty on judicial officer. As the section stood it was not quite clear whether the obli-ation to make inquiries of this kind lay on the Magistrate in every case of fire. s everybody must know, some fires were small and unimportant; others were xtensive, and regarding which very careful inquiries were necessary. It emed to Mr. Bernard unnecessary to burden the Magistrate with the duty of aking inquiries in every case of fire. The amendment therefore provided for ıe Chief Officer of the fire-brigade making inquiries in every case, and he ould report to the Magistrate, who in cases of doubt or difficulty would then, he thought fit, make an inquiry. Another object of the amendment was to orrect an inaccuracy of expression in the section as it now stood. As it now ad, the report was to be made to "the Magistrate of Police of the town or vision of the town in which the fire shall have occurred;" but as the Council new the Act would apply to the suburbs as well as to Calcutta, and the amend-ent which Mr. Bernard proposed provided that the report of the Chief Officer ould be made to the Magistrate having jurisdiction in the place in which the re should have occurred.

The motion was agreed to.

MR. BERNARD said that as the Council had come to a decision adverse to ıe only important amendment of principle which had been proposed, and as ıe amendments which had been agreed to did not make any substantive alter-ion in the provisions of the Bill, he would now move that the Bill as amended · passed.

The motion was agreed to, and the Bill was passed.

The Council was then adjourned to a day of which notice would be given.

*Saturday, the 2nd March* 1872.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
V. H. Schalch, Esq.,
H. L. Dampier, Esq.,
C. Bernard, Esq.,
Moulvie Abdool Luteef, Khan Bahadoor,
Baboo Digumber Mittle,
B. D. Colvin, Esq.,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
and
Rajah Jotlendro Mohun Tagore, Bahadoor.

## PORT IMPROVEMENT ACT (AMENDMENT) BILL.

Mr. Bernard presented the Report of the Select Committee on the Bill to amend the Port Improvement Act. Before explaining the alterations made by the Committee, he reminded the Council that the Bill had been introduced in order to grant to the Port Commissioners the same indemnity against the acts of their river employés as the Government had enjoyed under the old law. The principle of the Bill had been supported by the Chamber of Commerce, on the ground that if such indemnity were refused, the Commissioners would have to ensure themselves against occasional losses by maintaining high rates of port dues. The Council held that it would be better for the trade of the port that the indemnity should be granted to the Port Commissioners; and the Bill was referred to the Select Committee. The Hon'ble President, at the first reading, observed that it would be well that any other amendments required in the Port Improvement Act should be brought forward at the same time, so that if possible the Council might be insured against frequent tinkering of an enactment of this kind. The necessity for exhausting any proposals for amendments would, Mr. Bernard hoped, be considered by the Council sufficient excuse for the delay which had taken place in presenting the Select Committee's Report. The Select Committee had adopted the system of granting indemnity to the Port Commissioners nearly as it was introduced into the Council. The only real alteration was the insertion of the word "heretofore," so as to extend the indemnity to the year or eighteen months, during which the Port Commissioners had already, with so much advantage to the trade of Calcutta, managed the port affairs.

The Select Committee proposed new sections 2, 3, and 4, with the view of enabling the Port Commissioners, in their capacity of Port Conservators, to remove wrecks in case the owners of wrecked vessels declined to move in the

matter. These sections also enabled the Commissioners to realize the cost of such removal, plus a small margin, from any property they might recover. The margin was granted in order to cover the loss in cases where no property was recovered, for the proposed sections designedly did not give the Commissioners any power to cover the expenses of their work from owners or consignees. The work of removing wrecks must be undertaken for the good of the port,—the law made it very difficult to recover anything from owners, who usually lived on another continent, and it was thought to be simplest to give the Commissioners power to reimburse themselves for their expenses only in cases where they recovered property. The sections intentionally did not provide for the Commissioners claiming salvage on property they might recover; the object was to make the port as popular and as cheap as possible. There were some drawbacks to a swift stream like the Hooghly, in which cyclones and storm waves occasionally occurred; and the Commissioners did not wish to add to these drawbacks by claiming salvage on the rich cargoes which it might be their good fortune to recover from total destruction. It might not be out of place to show how the proposed sections would work in a case like that of the *Lady Melville*, which, as some of the Council would recollect, was burnt and sunk at her moorings. Her owners declined to have anything to do with her, and her wreck prevented the use of two or more good moorings. The Commissioners got the vessel up, and removed her to the opposite bank, and recovered from the wreck her goods, which sold for several thousands of rupees. In such a case the Commissioners would, under the proposed sections, claim only their expenses, plus 20 per cent. They would claim no salvage. If they recovered no property, they would claim nothing.

Section 5, as proposed by the Committee, reduced the maximum allowance of gunpowder to be kept on board of vessels in the port from 50lb to 5lb. A case had recently come to light in which a vessel with 50lb of powder stored on board her had caught fire. The flames were happily got under before they had reached the powder. If this amount of powder had blown up in a crowded part of the river, the consequences might have been serious. Merchant vessels did not require a large store of powder on board in the port of Calcutta. The Commissioners hoped to arrange for taking all surplus stocks of powder off vessels opposite the Moyapore Magazine without any cost to shippers, so that this restriction, though apparently irksome, would not cause any extra expense.

The 6th section obliged the police to give information to the Port Commissioners of breaches of port rules. Under recent arrangements the Commissioners paid three quarters of the cost of river police in the port, and it seemed perfectly fair that the police should do this work for the Commissioners.

Mr. Bernard added that the amended Bill would, with the permission of the President, be published in the Gazette, and the Council could, if it so pleased, proceed to the settlement of the clause of the Bill at the next meeting.

The President directed the report of the Committee and the amended Bill to be published in the Gazette.

## CHARITABLE ENDOWMENTS' BILL.

MR. BERNARD moved for leave to bring in a Bill for the due appropriation of certain educational and charitable endowments. It had recently been brought to the notice of the Bengal Government that charitable people—Natives and Europeans—had left or had given endowments to various hospitals, charities, and schools, in Bengal; that in some cases trustees were named by the donors, in other cases no trustees were named; provision was rarely made for succession to vacant trusteeships, and it happened that in some cases there had been no one vested with the power or responsibility to see that the proceeds of such donations or endowments were fully or wisely utilized. Mr. Bernard read extracts from a report by a Committee upon this subject. The committee had remarked that—

"Three of the most considerable of these endowments had each three years' income lying in the treasury to their credit. It does not appear that these balances have been accumulated for any particular object, and even if they have been so purposely allowed to accumulate, the balances ought to have been invested in Government paper from time to time, instead of lying idle in the treasury."

The Committee suggested—

"That all educational or charitable endowments for which the donors may not nominate trustees, or for which there may not be any surviving trustees, be vested in the Standing Endowment Trustees of the district (or of the division);"

And they added that—

"It would be the business of these trustees to see that the trust money was properly invested, to see that its annual yield was devoted to the object for which it was given or bequeathed, or to some kindred object; and to see that any surplus income was from time to time invested. Where the instructions of the donor, or the orders of Government, might have delegated the mangement of the yearly income of an endowment to any person or body, then the 'standing trustees' would not interfere until the managers died out or left."

It had been held that these suggestions, which seemed reasonable enough, could not be carried into effect without legislative sanction. The matter had been referred to by the Hon'ble President in his opening address at the beginning of the session, and Mr. Bernard had been instructed to bring forward a short Bill to give effect to the suggestions he had just read to the Council. Mr. Bernard submitted that it would be satisfactory to future donors and endowers to know that trustees existed who would be bound by the law to see that their bequests were made the most of. The Bill would not, it was proposed, embrace religious endowments or bequests, because Act XX of 1863 of the Viceroy's Council already sufficiently provided for such endowments; and section 14 of that Act enabled a person interested to proceed against any trustee or manager who might neglect or abuse any religious endowment under his care.

The motion was agreed to, and the President directed the Bill to be published in the Gazette.

The Council was then adjourned to Saturday, the 9th instant.

*Saturday, the 9th March* 1872.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
J. Graham, Esq., *Advocate-General.*
F. L. Beaufort, Esq.,
V. H. Schalch, Esq.,
H. L. Dampier, Esq.,
C. E. Bernard, Esq.,
Moulvie Abdool Luteff, Khan Bahadoor,
Baboo Digumber Mitter,
B. D. Colvin, Esq.,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
and
Rajah Jotteendro Mohun Tagore, Bahadoor.

## NEW MEMBER.

Mr. Beaufort took the oath of allegiance and the oath that he would faithfully fulfil the duties of his office.

## EMBANKMENTS AND WATER-COURSES.

Mr. Bernard moved that the Bill to amend the law relating to embankments and water-courses be again referred to a select committee with instructions to report in one month. He reminded the Council that this Bill, which affected very closely the welfare of the inhabitants of large tracts in Lower Bengal, had been introduced into the Council so far back as December 1870. When first introduced its object was to enable persons charged with the maintenance of embankments to act more promptly in cases of emergency, to provide for improving drainage channels connected with embankments, and also to arrange for a more just and fair apportionment of the cost of such undertakings. At the first reading of the Bill on the 7th of January 1871, the hon'ble member then in charge (Mr. Schalch) explained its scope, and an hon'ble member opposite (Baboo Degumber Mitter) expressed his approval of its principle and his concurrence in the arguments of the hon'ble mover. The Bill was for several months under the consideration of a select committee, who obtained opinions thereon from different parts of Bengal; finally, the select committee submitted their report in August last, and that report had been presented to the Council. One notable change which that committee introduced was that the whole cost of existing works to be brought under the Bill should be paid for by the parties whose lands might be protected or benefited, though it was provided at the same time that if Government received any extra revenue or payments for keeping up any embankments, such revenue should be remitted. The committee made certain other changes to which Mr. Bernard did not refer in detail. The committee's

report and the amended Bill were republished during the recess, and before the opening of the present session of the Council more than one representation had been received regarding the Bill. One specially valuable representation was received from the British Indian Association to the effect that in some parts of the country Government had, according to ancient customs or under special agreements, maintained embankments at the public expense, and that there would be much hardship in now throwing these charges on the zemindars. With reference to this and to other representations, the Hon'ble President on the first day of this session, when reviewing the business to be laid before the Council, had explained to the Council the policy of Government in the matter, and the hon'ble member on the right (Mr. Schalch) in charge of the Bill had also stated what would be done to carry out that policy. The remarks to which he (Mr. Bernard) alluded had been so recently made that he would not trouble the Council by reading them on that occasion: they would be found in the Proceedings of the Council for the 5th December last. Their purport was that Government in no way desired to throw upon persons protected the cost of any works which Government itself was bound to maintain, and an assurance was given that the Member in charge of the Bill would "look into the subject and see what embankments Government was in justice bound to maintain, or what embankments Government had been obliged to take up owing to those who were properly liable not fulfilling their liabilities." The charge of the Bill had been made over to Mr. Bernard, who after making himself, as far as possible, acquainted with embankment affairs, with the approval, or rather at the instance, of the hon'ble member (Mr. Schalch) on his right, proposed that the Bill should again be referred to a select committee. He found that, besides the main point regarding the liability for the cost of embankment works, there were certain other references on points of detail which needed calm discussion and careful settlement. At the same time the Council might perhaps desire to know the result of inquiries made into the history of different embankments, and the view taken of the liabilities of Government. So far as the official literature of the subject went, it seemed that the expenditure of Government on embankments for the protection of cultivated lands in Lower Bengal had increased enormously of late years. Government now spent on embankments more than double what it spent twelve years ago, and it did not do anything like all that the circumstances required. This gradual, but great increase was due mainly to the general rise in the price of labor and produce, and it was partly due to the increased wants which arose everywhere as knowledge increased. For the current year 1871-72 Government was spending on embankment works and repairs (exclusive of embankments, costing Rs. 53,000 a year, and paid for by zemindars) nearly 4½ lacs of rupees. This expenditure was over and above the outlay on the great Orissa embankments. The present Bill did not concern them. The total length of the Government embankments was about 1,800 miles; while the length of the embankments maintained by Government, but paid for by zemindars, was 430 miles. All the embankments in Behar were paid for by the zemindars according to customs or according to

special agreements, which varied in different districts. It was now proposed to give the force of law to these customs and agreements, but at the same time to permit recourse to the new law in case of new works. In Moorshedabad the engagements of the zemindars given at the Decennial Settlement bound them to maintain embankments on their estates, but on some estates Government at present maintained the embankments, while on others the zemindars did the work. There was much loss to every body from the want of system and organization in the management of the Moorshedabad embankments, and it was proposed that the Bill as it now stood should apply to this district. In the 24-Pergunnahs the charge of, and responsibility for, embankments was at the end of the last century, and at the beginning of this, handed about from one Government officer to another; from the zemindars to Government, and back again from Government to the zemindars. There was no agreement at the Decennial Settlement as to whether Government or the zemindars should undertake these particular embankments. For some four or five years early in the present century, nobody did the work at all, and the district suffered immensely in consequence. Finally in 1838 the embankments were again undertaken by Government on a report from the Revenue Board "that Government are bound either to keep up the 24-Pergunnahs embankments in full repair, or failing that, to pay over to the zemindars annually a sum of Rs. 16,786." During the current year Government was spending on the embankments of the 24-Pergunnahs Rs. 93,000, and it was thought that the provisions of this Bill might properly be applied to the 24-Pergunnahs, and the sum of Rs. 16,800 remitted under section 12.

In the Midnapore district the case was very different. In the interior of the district the yearly cost of embankments on the Cossye was paid by the zemindars according to special agreements made with Government. The embankments near the mouths of rivers in Hidgelle and Tumlook and the great sea-dyke of Hidgellee were maintained by Government; but all the cultivated lands of these tracts, much of which was temporarily settled, paid according to agreements made last century, and subsequently repeated, an embankment cess of $1\frac{1}{2}$ anna per beegah. The Government in 1838 accepted its full liability for the maintenance of the embankments and larger drainage channels in Hidgellee and Tumlook, and it was now proposed that in the Midnapore district the existing arrangements should be upheld; that the custom of the Cossye embankments be respected, and that the Bill should operate in Midnapore only in respect of small drainage channels or other works which might hereafter be undertaken. On the estates which belonged to, or were off-shoots of the great Burdwan zemindaree, the Government now kept up all embankments; and on these works it was spending during the present year about Rs. 87,000. The Maharajah of Burdwan paid, directly or indirectly, Rs. 60,000 a year for the work thus done. The arrangement under which Government began to repair these embankments dated from 1809 or thereabouts, when the then Maharajah failed to maintain his embankments properly. It was now proposed that Government should continue to maintain these embankments even

though their maintenance might at times cost something more than the annual payment. But it was considered that the parties interested might very reasonably be called upon under the Bill to pay for new masonry sluices, drainage channels, and other improvements of a kind not contemplated when Government took over the Burdwan embankments in 1809 and 1826. Mr. Bernard was glad to be able to mention that the account which he had given, and the proposals which he had sketched, had been considered, and in general terms approved by the Hon'ble Member on the right (Mr. Schalch) before they were submitted to the Council, for he was sure that the Council would give more weight to the hon'ble member's opinion than could be accorded to his (Mr. Bernard's) own.

Before he left the subject of embankments, he would only say one word on the general question which had been warmly discussed, on and off, during the last fifty years in Bengal, whether river embankments did any good or not. Skilful engineers, experienced collectors, and others, had given very discordant opinions on this point; but Mr. Bernard believed he might say that there was no doubt whatever about the absolute necessity for embankments on the sea-face of Midnapore or on tidal rivers. The reports of 1835 and 1837, sent in by the officers of the 24-Pergunnahs, gave a most melancholy picture of what had happened in the 24-Pergunnahs during the years when embankments were left to themselves. The zemindars were ruined, ryots emigrated, Government revenue was perpetually in arrears, estates paying one lac of rupees had to be bought in by Government, and estates which had fetched 2¾ lacs three years before, were sold by auction for Rs. 38,000. All or much of this deterioration was put down to the neglect of embankments. The immense good which had been done by the great sea-dyke at Hidgellee was well known. The only new embankments which were recently proposed on any large scale were those in Orissa and those on the Gunduck in Chumparun. Regarding the absolute need for embankments in Orissa, there seemed never to have been two opinions, though there had been much discussion as to the cheapest and best way of giving the required protection. There was much to be said in favor of letting a broad and silt-laden river like the Ganges fertilize the country; moreover it would be an enormous undertaking to embank this great river all through Bengal; but the best opinions in Behar were in favor of embanking the Gunduck. Mr. Thomas Gibbon, the agent of the Bettiah estate, to whose opinion on matters of zemindaree management most Natives and every European in Behar would defer, had stated his conviction that the Bettiah estates would gain much in value if the Gunduck were properly embanked, and he held that great embankments of this kind could be successfully managed by Government and by Government only. If the present Bill should become law, it would, Mr. Bernard believed, contain ample safeguards against Government officers undertaking unnecessary works of embankment or drainage. There was one other matter which would be laid before the select committee, and that was a proposal to incorporate with this Bill provisions enabling the majority of persons interested to undertake at the expense of the lands affected (and, if necessary, carry out for themselves) improvements in the local drainage. The Hon'ble President in his opening

address this session dwelt on the necessity of some such legislation ; the hon'ble member opposite (Baboo Digumber Mitter) had on more than one occasion, and notably in the debate of the 7th January 1871, urged the need of such local drainage improvements. The Bill, as it now stood, provided for drainage improvements in connection with embankments; but there was, it was feared, often very great need for, and very great difficulty in effecting these drainage improvements. The epidemic fever committee, of which the hon'ble gentleman opposite was a member, the skilled engineers and medical officers who were now examining into the phenomena of the Burdwan fever epidemic, all were agreed that in many places the local drainage required much improvement, and that the want of such drainage might be, and probably was, one of the causes of the epidemic. With the permission of the Council, there would be submitted to the select committee proposals for enabling the people to effect, or to have effected, improvements of this kind. Mr. Bernard had explained the manner in which it was proposed to redeem the pledge given by the President in regard to the Embankment Bill, but at the same time he was quite aware that it was within the discretion of the Committee to adopt these views or to modify them, and it would eventually be for the Council to consider how far they could be finally accepted. He would now move that the Bill to amend the law relating to embankments and water-courses be again referred to a select committee with instructions to report in one month. The old committee consisted of Messrs Schalch, Thompson, and Robinson, Raja Joteendro Mohun Tagore and himself. He now proposed that the committee should consist of—

Mr. Beaufort, Mr. Schalch, Mr. Dampier, Baboo Digumber Mitter, Rajah Joteendro Mohun Tagore, and himself.

He was glad to be able to add that Mr. Schalch, whose knowledge of such matters was so well known to the Council, had kindly agreed to take charge of the Bill again, and conduct it through the select committee.

His Honor the President said that he had only a few words to say before putting the motion to the Council. The subject was one which hon'ble members were aware was of very great difficulty and very great complication, and had up to the present time given him very great anxiety. He was quite sure that he felt, and he believed the members of the Council and the people of Bengal would feel, very greatly indebted to the hon'ble member in charge of the Bill (Mr. Bernard) for the thorough sifting of the historical questions which he had undertaken so successfully, and the thorough way in which he had carried out that sifting. As they would see when the result of his investigations was laid before the Council, they would find that the facts had been stated as clearly as it was possible to state them. His Honor trusted that the exposition of the principles upon which the Government was disposed to act, which had been so completely and clearly stated by the hon'ble member, would upon examination be found acceptable to the Committee and the Council. The hon'ble member had stated that which was the root of our present proposals, namely, that the Government proposed fully to accept the obligations which attached to it at the time of the

permanent settlement; and he had also said that we proposed that any duties which had been since undertaken by the Government should be examined in each particular case upon its own merits, that was to say where the Government had made a deliberate and binding bargain, we did not propose to recede from that bargain, but to adhere to it. On the other hand, where the Government had under stress of circumstances undertaken certain duties, because no one else would perform them—where the Government had merely intervened as the Father of the country in order to protect it from disasters owing to the failure of the obligations of others—the Government was not irrevocably bound by its action for all time. We should deal with each case upon its own merits, and consider whether the Government was bound by real obligations, or whether the case should be brought under the general provisions of the Bill.

Another feature of importance to which the hon'ble member had alluded was this, namely, that the obligations which were undertaken by the Government or by private parties were of this nature that they should maintain bunds, embankments, and works of a certain character. Modern science had progressed very much, sanitary science had progressed a little; works of a character unknown in those days,—works which were described as sluices, drainage channels, and irrigation channels—might be with advantage, added to the embankments. We thought that the Council would accept it as equitable that where works of a totally new character were added to the old works, the new works should be the subject of separate and distinct provisions. His Honor did not suppose that the members of this Council or of the Committee would pledge themselves by their silence to the propositions that were now put forward; but he trusted they would think that so far as a one-sided statement of the general principles enunciated went, they were not inequitable, and that the Council would be prepared to give them a favorable consideration.

The motion was agreed to.

## CHARITABLE ENDOWMENTS.

Mr. Bernard moved that the Bill to provide for the due appropriation of certain educational and charitable endowments be read in Council. In doing so he said that when he had the honor to ask for leave to bring in this Bill he explained the object it was intended to meet, and he would not trouble the Council in that respect again. He would now only remark briefly upon the provisions of the Bill. Section 1 provided for investing endowments of the kind mentioned in the Bill in trustees appointed by the Government, and the section provided most carefully that endowments for which trustees had been appointed, or for which trustees should exist, should not come under the provisions of the Act. It did not provide that trustees appointed thereunder should in any way interfere with existing endowments which were properly maintained. Section 2 provided that for every district in which any endowments having no trustees existed, the Lieutenant-Governor should nominate trustees in whom such endowments should vest, and that the chief executive officer of the district

should be one of the trustees, so that the Government, who were interested in the good order of such endowments, should be properly represented amongst the trustees. At the end of the section it was provided that the trustees appointed under the Act should exercise the same powers as were conferred upon the trustees under the instrument of endowment, and where there was no instrument of endowment, that they should be subject to the orders of the Lieutenant-Governor. The Bill did not empower the trustees to devote the money provided for a charitable or educational purpose to any other purpose than that for which the money was left. Section 3 merely empowered the trustees to appropriate the income of the endowment to the objects of the donor. It also provided that the trustees, with the permission of the Lieutenant-Governor, might appropriate part of the capital sum of the endowment for any special object connected with the purposes of the endowment. Some such provision had been found necessary in the case of religious endowments, and the law relating to those endowments allowed the trustees in certain cases in this way to expend the capital sum when necessary in furtherance of the objects of the endowments; such for instance was the repair of buildings which were falling down, or the erection of new buildings, or in any way adding to the value of the property. The remaining sections provided that any body interested in an endowment might sue the managers or trustees if they neglected their duty. This was a very similar provision to a clause in Act XX of 1863 which enabled any body interested in a religious endowment to sue the trustees or managers in a court if they abused their trust. At the same time an indemnity was given to the trustees appointed under the Act, to the effect that they should not be liable to damages if they had acted *bonâ fide* for the benefit of the endowment.

The motion was agreed to, and the Bill was referred to a select committee, consisting of Moulvie Abdool Luteef, Baboo Digumber Mitter, Mr. Colvin, and the mover, with instructions to report in one month.

## CALCUTTA PORT IMPROVEMENT.

On the motion of Mr. Bernard the Council proceeded to the consideration of the report of the select committee on the Bill to amend the Calcutta Port Improvement Act, being Act V of 1870 passed by the Lieutenant-Governor of Bengal in Council, in order to the settlement of the clauses of the Bill in the form recommended by the select committee.

Sections 1 and 2 were agreed to.

In section 3, on the motion of Mr. Schalch, the words "with or without cargo" were inserted after the word "vessel" in line 1; the word "Commissioners" was substituted for the word "Conservator" in lines 3, 11, and 15; and the words "and whose decision shall be final" were added to the section.

In section 4, on the motion of Mr. Schalch, the words "within one month from the date of recovery" in line 5 were omitted, and the words "may be detained by the Commissioners at the risk and expense of all parties interested therein" were inserted after the word "nature" in line 9.

In section 5, on the motion of Mr. Colvin, the words "from such time as the Lieutenant-Governor of Bengal shall notify in the *Calcutta Gazette* and" were inserted after the figures 1855"; and the word "thereafter" was substituted for the word "hereafter" in line 6.

Sections 6 and 7, and the preamble and title, were agreed to.

His Honor the President said that he observed in the list of business a notice of motion that the Bill should be passed. He might remark that under the rules for the conduct of business a Bill could not be passed on the same day when it was settled in Council, if any amendments had been introduced in it. He thought, therefore, that the proper course would be to postpone the passing of the Bill till the next meeting of the Council.

Mr. Schalch said that he would ask the President to suspend the Rules in order that the Bill might be passed; as the amendments that had been made were not of such a nature as to render it necessary that the passing of the Bill should be postponed. It would perhaps be remembered that the Bill had been introduced as an urgent one, and as it had been before the public for some time, he did not see the necessity of further delay.

The President said that he would like to take the sense of the Council before deciding upon this matter.

Mr. Dampier said that the only reason that had been given for the suspension of the Rules was that the Bill had been for some time before the Council and the public: he did not think that that was a sufficient reason for suspending the rules of the Council. There had been a good deal said of late about suspending the rules unnecessarily, both in this Council and elsewhere, and he thought it undesirable that such a course should be adopted without a full explanation of the reasons which made such a course desirable, which perhaps his hon'ble friend would give.

Mr. Wyman said he thought that the suspension of the Rules should only take place under some real necessity, and that it was a dangerous practice to discard the safeguard provided by the Rules of the Council; and as the hon'ble member who applied for the suspension of the Rules had not shown sufficient reason to do so, he was certainly opposed to that course being followed.

His Honor the President said that as there did not seem to be unanimity of opinion as to the propriety of suspending the Rules, he thought that the Bill as settled by the Council should be published in the ordinary way, and might be considered and passed at the next meeting of the Council.

The Council was adjourned to Saturday, the 16th instant.

*Saturday, the 16th March 1872.*

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
F. L. Beaufort, Esq.,
V. H. Schalch, Esq.,
H. L. Dampier, Esq.,
C. E. Bernard, Esq.,
Moulvie Abdool Luteef, Khan Bahadoor,
Baboo Digumber Mitter,
B. D. Colvin, Esq.,
T. M. Robinson, Esq.,
and
Rajah Jotendro Mohun Tagore, Bahadoor.

## CALCUTTA PORT IMPROVEMENT.

Mr. Bernard moved that the Bill to amend the Calcutta Port Improvement Act, being Act V of 1870 passed by the Lieutenant-Governor of Bengal in Council, and to amend Act XXII of 1855, the clauses of which were settled at the last meeting, be passed. The Bill as settled by the Council had been published and had been fully considered, and as nobody had any amendments to propose as far as he was aware, he would now move that the Bill be passed.

The motion was agreed to, and the Bill passed.

## EMBANKMENTS AND WATER-COURSES.

Mr. Schalch moved that Mr. Robinson be added to the Select Committee on the Bill to provide for embankments and water-courses.

The motion was agreed to.

## MOFUSSIL MUNICIPALITIES.

Mr. Bernard moved that Mr. Beaufort be added to the Select Committee on the Bill to amend and consolidate the law relating to municipalities.

The motion was agreed to.

## PROVINCIAL FINANCES.

His Honor the President said that before adjourning the Council he would announce to the members to-day that he proposed at the next meeting of the Council to make the financial statement—the statement which was prescribed by the resolution of the Government of India commonly known as the financial decentralization resolution, a statement of the kind being by that resolution appointed to be made by each of the local Governments in their respective Legislative Councils. On that occasion he should take the opportunity of explaining and reviewing the mode in which the trust committed to us, the mode in which the money committed to the administration of the Government of Bengal by that resolution, had been

administered in the year which was now expiring; and he would take the opportunity to lay before the Council the mode in which we proposed to meet the financial requirements of the ensuing year. He would also take occasion to explain his views regarding our financial position, and the reasons which had guided him in distributing the funds at his disposal in the various departments of the State.

The Council was adjourned to Saturday, the 23rd instant.

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By order of THE PRESIDENT the Council was further adjourned to a day of which notice would be given.

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*Saturday, the 20th July* 1872.

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Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble F. L. BEAUFORT,
The Hon'ble V. H. SCHALCH,
The Hon'ble LORD ULICK BROWNE,
The Hon'ble C. E. BERNARD,
The Hon'ble MOULVIE ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble B. D. COLVIN,
The Hon'ble T. M. ROBINSON,
The Hon'ble F. F. WYMAN,
and
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR.

## NEW MEMBERS.

THE Hon'ble the ACTING ADVOCATE-GENERAL and the Hon'ble LORD ULICK BROWNE took the oath of allegiance and the oath that they would faithfully fulfil the duties of their office.

## EDUCATIONAL AND CHARITABLE ENDOWMENTS.

The Hon'ble MR. BERNARD presented the Report of the Select Committee on the Bill "to provide for the due appropriation of certain educational and charitable endowments."

HIS HONOR THE PRESIDENT directed the Report and amended Bill to be published in the Gazette.

## BENGAL MUNICIPALITIES BILL.

The Hon'ble MR. BEAUFORT moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to municipalities be taken into consideration in order to the settlement of the clauses of the Bill, and that the

clauses of the Bill be considered for settlement in the form recommended by the Select Committee. In doing so he said he begged the Council would understand that he had undertaken charge of the Bill at a comparatively late date at the special request of his hon'ble friend Mr. Bernard. The Council would remember that the hon'ble member had introduced this measure at the beginning of the year, when it was referred to a Select Committee. Since then other onerous duties had been imposed upon the hon'ble member, and he had not had so much time to devote to the further consideration of the Bill as he had desired. He had therefore requested Mr. Beaufort to take charge of the measure. The hon'ble member had taken a sedulous interest in this Bill, and Mr. Beaufort's connection with it had been very subordinate. If he might use the figure, Mr. Bernard had built the vessel, and he (Mr. Beaufort) had only assisted in setting up the rigging. He might also state that all the other hon'ble members of the Committee had taken great interest in the measure, and had worked very laboriously in putting it into shape. The whole Committee had twice been through the clauses of the Bill, and intermediately a Sub-Committee had, with the assistance of the learned Secretary, examined all the details and gone through them very carefully.

In the consideration of the Bill the Committee had been assisted by a large number of communications from various municipal bodies all over the country and from various gentlemen of practical experience. The papers which he held in his hand, filling 150 pages of small type, comprised a great deal of exceedingly useful matter, and the Committee had obtained from the practical wisdom contained in them many valuable suggestions. Every line of them had been carefully read and respectfully considered. He had no doubt in his own mind that this Bill would be of great practical use to the country, and would promote the happiness and welfare of the communities to which it would apply. Amongst the papers there were a large number of petitions, from which it appeared that the people were afraid of the introduction of this Bill: they feared the pressure of taxation, and the oppression which they alleged would arise from the operation of this law. It would be clear to any body reading those petitions that the authors of them had been greatly actuated by private motives, and that the great body of those who had signed them had been very ignorant of the intentions and provisions of the Bill. In a former debate it was explained at considerable length that it was never intended that all the taxes specified in the Bill should be imposed on any one community, and that the Bill contained provisions for the imposition of several taxes in order to enable every community to select and choose from amongst these taxes those which under the circumstances were most applicable and most easily collected with the least burthen on those on whom they fell. But they were afraid of all the taxes being imposed one upon another. Only two days ago the Committee received a petition of considerable length from the inhabitants of Jessore, with the very large number of 8,363 signatures: and these men had been induced to believe that all these taxes were to be imposed one after another, so that they would be reduced to the extremity of distress. They had so misunderstood the provisions of the Bill that one of the sections, the special

object of which was to prevent double tax by means of a composition between the landlord and the tenant when the tax was imposed on a building and on the land on which it stood, had been interpreted to mean that a double taxation, first upon the house and then upon the land on which it stood, was to be imposed on one individual. He merely mentioned this as an instance to show the way in which these bodies of men, who in large numbers had come forward with petitions, had misunderstood the provisions of the Bill.

He thought it would be waste of time were he to ask the Council to go with him through all the changes which the Select Committee had introduced into the Bill; and considering the large amount of business which was to be placed before the Council that day, he thought the best thing he could do was to pass on at once to those objections which had been appended to the report of the Committee by two hon'ble members. The first objection which the hon'ble member on his right had raised regarded the elective system. The hon'ble member's objection apparently was not so much to the system as a system, but to the way in which it was proposed to be introduced here. He thought that it was bad, because it was not introduced wholly and without restrictions—

His Honor the President said that he would suggest to the hon'ble member that as regards those points upon which specific amendments had been proposed it would be best to discuss them at the time when they were brought forward; otherwise the Council would have to discuss them twice over.

The Hon'ble Mr. Beaufort observed that in that case he thought he need not make any further remarks at present.

His Honor the President said, he should be sorry to put the motion to the Council without expressing on his own part, and on the part of the members of the Council who had not taken part in the labours of the Committee, their great sense of the obligations under which they found themselves to the Committee for their labours in respect of this Bill. The Council for several months past had not been much before the public, but it had nevertheless been engaged on various Committees and had been doing extremely good work. The lion's share of the work had fallen upon the Committee on this Bill, who had manipulated its provisions with much care. The Council would see that they had done so to a very great extent; they had made great changes in the form and substance of the Bill as it had been introduced by the Government. He should be the first to acknowledge that those changes were very beneficial changes and had effected a very great improvement in the Bill; and the Council were greatly indebted to the Committee for their most laborious and useful efforts. The hon'ble member now in charge of the Bill had modestly disclaimed the important part he had taken in perfecting the Bill, and had compared his work to the superficial rigging of a ship. His Honor thought that the hon'ble member had unfairly diminished the merit due to him. Although the Bill in its rough lines was cast when it came into the hands of the hon'ble member now in charge of the Bill, although thoroughly acknowledging the services in regard to this Bill of another hon'ble member, still His Honor thought it right to say that he

believed that in the drawing and composition of the Bill as it now stood, the Council were under the very greatest obligations to the hon'ble member now in charge.

His Honor would now say one word with regard to the numerous petitions on the subject of this Bill which had been laid before the Council. He acknowledged most thoroughly and heartily that there was a great deal of honest good sense in those petitions; that there was much in them, as the hon'ble member had himself acknowledged, which had been of use, and many of the suggestions contained in them had been adopted by the Committee: on the other hand the petitions contained many errors, but they were to a greater or less extent natural errors, and he was not disposed harshly to criticise them. Under the circumstances it was but natural that these people should view with a somewhat jealous eye any proposal for new taxation. To one thing only he must more particularly advert, viz. the tone of distrust and suspicion of the Government which seemed to run through these petitions. He thought that in Bengal in particular, where the people were much advanced under the influence of education, there was too great a disposition to affect a belief that the Government was a kind of evil spirit always seeking to take every possible advantage of every loop-hole which the law gave them to impose taxes and hardships and grievances upon the people. Now, where there was a civilized Government you must trust that Government to some extent. His Honor did not think that the Government could be accused of systematically seeking to abuse their powers. The Indian Government had no doubt made mistakes, as all Governments must do; but he did claim for the Government of India, foreigners to the country, who had gone into it without personal prejudices or connections, that it was one of the fairest Governments in the world. He said it was unjust and unfair that it should be assumed by the people of Bengal that the powers entrusted to the Government would necessarily be abused. He did hope that they should see that the powers which the Council might entrust to the Government would only be used to the best of our means for the benefit of the people and the country, and that the objectors would not have ground to suppose that the powers given to the Government would be used to their disadvantage.

The motion was put and agreed to.

His Honor the President said it had hitherto been the custom to go through a Bill clause by clause; but on looking over the Rules of the Council he found that there was no necessity for the Council to do so; and inasmuch as this was a Bill of many clauses, and the members had put their amendments upon the paper, he thought that the best course would be, following the example of the Legislative Council of India and the other Councils in India, that he should put the amendments placed upon the paper and then consider the Bill as a whole. He would therefore put the amendments section by section in the order in which they stood.

The definition of "movable property" in section 3 included amongst other things thatched and tiled houses, unless the outer walls were chiefly or wholly made of bricks.

On the motion of Mr. Beaufort the words "or stones" were added to the definition, to meet the case of such walls being made of stones.

The Hon'ble Mr. Beaufort also moved that the following definition of "chakaran land" be added to the definitions in section 3. Those words, he observed, were used frequently in the latter portion of the Bill relating to third class municipalities: it was thought necessary that there should be some definition of the term, and he accordingly proposed to put in the words:—

"'Chakaran land' means land which has been assigned for the maintenance of a person bound to keep watch and ward in any place but does not include tharedari land or land similarly assigned for the maintenance of a ghatwal or other person bound to perform duties anywhere beyond the limits of such place."

He said that the definition was so framed for the purpose of distinguishing lands known as *gram-sarangami* from those called *thanadari* and *ghatwali*.

The Hon'ble Rajah Jotiendro Mohun Tagore observed that he thought that the word "similarly" in the latter part of the definition seemed to be somewhat improperly used; for *chakaran* lands were assigned by the zemindar, but *ghatwali* lands might have been given by the Government at the time of the settlement.

The Hon'ble Mr. Beaufort remarked that he did not think the word "similarly" altered the sense of the definition in any way, but he would not object to its omission.

The motion as amended was then agreed to.

The Hon'ble Rajah Jotiendro Mohun Tagore said he did not think that all the municipalities to which the provisions of the District Municipal Improvement Act had been extended should necessarily be first class municipalities. There might be places in which that Act had been introduced, but which were nevertheless too small or too poor to be classed as first class municipalities under the Bill, and the people of such places might consider it a hardship that they should be subjected to the provisions relating to that class of municipalities. Next, he did not see that there was in the Bill any limitation as to second class municipalities, as there was in relation to first and third class municipalities. He would, therefore, move in section 6, lines 7 to 9, to omit the words "unless the provisions of the District Municipal Improvement Act of 1864 have already been extended thereto," and to substitute the following:—

"And no place where the average number of inhabitants is less than one thousand to the square mile of the area thereof, shall be declared to be a second class municipality."

His Honor the President said that as regards the most important part of this amendment, namely the definition of second class municipalities, the Government were prepared to accept the motion, and he hoped that that would induce the hon'ble member to withdraw the rest of the amendment. On that point His

HONOR thought the hon'ble member had reason to ask that second class municipalities should be limited in the same manner as first class municipalities had been limited; for although the Government were not likely to be unmindful of reasonable considerations in determining what should be second class municipalities, still to quiet the apprehensions of the people it was well that they should be limited, and that it should be understood that they were to be confined to places that were towns, and that the provisions relating to second class municipalities were not to be extended to villages and tracts of country. With regard to the first part of the amendment relating to first class municipalities, to places in which the District Municipal Improvement Act had been introduced, the hon'ble member should observe that the provision was not imperative. The Government were not bound to declare all those places first class municipalities: an option would rest with the Government, but His HONOR believed that the members who had taken part in this matter were guided by this consideration, that there might be (in one instance there was) small municipalities which were in the hands of people of advanced position and advanced intelligence, who had thought it advisable to introduce into those places the larger Municipal Act. The town of "Ooterpara," for instance, which was in the hands of an enlightened class of people, was now subject to the provisions of the District Municipal Act, and His HONOR thought it would be a pity that the Council should go back and limit the taxes which were voluntarily imposed at a higher rate than the rate of taxation in second class municipalities would admit. Therefore he hoped that in declaring that the Government would accept the major part of the amendment the hon'ble member would not think it necessary to press the first part.

The Hon'ble RAJAH JOTTENDRO MOHUN TAGORE said that after the remarks that had fallen from His Honor the President, he would withdraw the first portion of his amendment.

The latter part of the amendment was then agreed to.

The Hon'ble RAJAH JOTTENDRO MOHUN TAGORE moved in section 7, lines 1 and 2, the omission of the words "containing not less than 300 inhabitants," and the substitution for them of the words "where the average number of inhabitants is less than 300 to the square mile of the area of such place." He said that it would be seen from the notice of amendments that he intended to move the omission of Chapter XII of the Bill relating to third class municipalities; therefore he reserved his right to move the omission of the entire section if the amendment which he proposed to move in respect of Chapter XII should be adopted. With reference to the section under consideration, it appeared to him that to limit the number of inhabitants without limiting the area of the municipality was very vague. The word "place" had been defined in the Bill to mean a tract of country. Now under this section any tract of country might be included in a third class municipality if 60 houses, however sparsely situated, could be got together to complete the number of inhabitants. That, he imagined, was not the intention of the Legislature.

The definition of "movable property" in section 3 included amongst other things thatched and tiled houses, unless the outer walls were chiefly or wholly made of bricks.

On the motion of Mr. Beaufort the words "or stones" were added to the definition, to meet the case of such walls being made of stones.

The Hon'ble MR. BEAUFORT also moved that the following definition of "chakaran land" be added to the definitions in section 3. Those words, he observed, were used frequently in the latter portion of the Bill relating to third class municipalities: it was thought necessary that there should be some definition of the term, and he accordingly proposed to put in the words:—

"'Chakaran land' means land which has been assigned for the maintenance of a person bound to keep watch and ward in any place: but does not include thanadari land or land similarly assigned for the maintenance of a ghatwal or other person bound to perform duties anywhere beyond the limits of such place."

He said that the definition was so framed for the purpose of distinguishing lands known as *gram-sarinjami* from those called *thanadari* and *ghatwali*.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE observed that he thought that the word "similarly" in the latter part of the definition seemed to be somewhat improperly used; for *chakaran* lands were assigned by the zemindar, but *ghatwali* lands might have been given by the Government at the time of the settlement.

The Hon'ble MR. BEAUFORT remarked that he did not think the word "similarly" altered the sense of the definition in any way, but he would not object to its omission.

The motion as amended was then agreed to.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said he did not think that all the municipalities to which the provisions of the District Municipal Improvement Act had been extended should necessarily be first class municipalities. There might be places in which that Act had been introduced, but which were nevertheless too small or too poor to be classed as first class municipalities under the Bill, and the people of such places might consider it a hardship that they should be subjected to the provisions relating to that class of municipalities. Next, he did not see that there was in the Bill any limitation as to second class municipalities, as there was in relation to first and third class municipalities. He would, therefore, move in section 6, lines 7 to 9, to omit the words "unless the provisions of the District Municipal Improvement Act of 1864 have already been extended thereto," and to substitute the following:—

"And no place where the average number of inhabitants is less than one thousand to the square mile of the area thereof, shall be declared to be a second class municipality."

HIS HONOR THE PRESIDENT said that as regards the most important part of this amendment, namely the definition of second class municipalities, the Government were prepared to accept the motion, and he hoped that that would induce the hon'ble member to withdraw the rest of the amendment. On that point HIS

HONOR thought the hon'ble member had reason to ask that second class municipalities should be limited in the same manner as first class municipalities had been limited; for although the Government were not likely to be unmindful of reasonable considerations in determining what should be second class municipalities, still to quiet the apprehensions of the people it was well that they should be limited, and that it should be understood that they were to be confined to places that were towns, and that the provisions relating to second class municipalities were not to be extended to villages and tracts of country. With regard to the first part of the amendment relating to first class municipalities, to places in which the District Municipal Improvement Act had been introduced, the hon'ble member should observe that the provision was not imperative. The Government were not bound to declare all those places first class municipalities: an option would rest with the Government; but His HONOR believed that the members who had taken part in this matter were guided by this consideration, that there might be (in one instance there was) small municipalities which were in the hands of people of advanced position and advanced intelligence, who had thought it advisable to introduce into those places the larger Municipal Act. The town of "Ooterpara," for instance, which was in the hands of an enlightened class of people, was now subject to the provisions of the District Municipal Act, and His HONOR thought it would be a pity that the Council should go back and limit the taxes which were voluntarily imposed at a higher rate than the rate of taxation in second class municipalities would admit. Therefore he hoped that in declaring that the Government would accept the major part of the amendment the hon'ble member would not think it necessary to press the first part.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said that after the remarks that had fallen from His Honor the President, he would withdraw the first portion of his amendment.

The latter part of the amendment was then agreed to.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved in section 7, lines 1 and 2, the omission of the words "containing not less than 300 inhabitants," and the substitution for them of the words "where the average number of inhabitants is less than 300 to the square mile of the area of such place." He said that it would be seen from the notice of amendments that he intended to move the omission of Chapter XII of the Bill relating to third class municipalities; therefore he reserved his right to move the omission of the entire section if the amendment which he proposed to move in respect of Chapter XII should be adopted. With reference to the section under consideration, it appeared to him that to limit the number of inhabitants without limiting the area of the municipality was very vague. The word "place" had been defined in the Bill to mean a tract of country. Now under this section any tract of country might be included in a third class municipality if 60 houses, however sparsely situated, could be got together to complete the number of inhabitants. That, he imagined, was not the intention of the Legislature.

His Honor the President said that they had not limited municipalities in the sense the hon'ble member proposed, for this reason that the provisions relative to third class municipalities were intended to apply to rural villages only. It might happen that 60 or 100 houses formed a village, the lands of which extended over a large area of jungle and would not contain an average of 300 inhabitants to the square mile, if you spread the area over the whole village area. Were you on that account to have no chokidar? On the contrary it appeared to His Honor that such a place was more exposed to the depredation of thieves and robbers, and more especially needed chokidars. It thus seemed to him that the amendment went entirely against the whole principle on which third class municipalities were founded, the provisions relating to which were taken from the Act of 1870. On these grounds His Honor was opposed to the amendment.

The motion was put and negatived.

The Hon'ble Rajah Joteendro Mohun Tagore moved the omission of the words "or cause to be elected" in lines 2 and 3 of section 12, and also the omission of section 15, which related to the election of Commissioners by the tax-payers. In doing so he said he found in the Bill no procedure laid down for introducing the elective system in certain municipalities, as originally proposed in the statement of objects and reasons: on the contrary, there were sections introduced in the Bill which were opposed to the system of municipal self-government. For instance in section 15 it was left to the discretion of the Lieutenant-Governor, when he thought it advisable, to permit the election of a "certain number" of the Commissioners in any municipality. Then again by section 14 he would have the power of nominating a certain number of official Commissioners besides the Magistrate of the district, or the Magistrate of the division of a district, who would be ex-officio Commissioners. Next, by section 17 the Magistrate of the district was constituted the Chairman of the municipality if it was the sudder station of a district, or the Magistrate of the division if the municipality was situated in a division of a district. Then again by section 285 the control over the proceedings of the Commissioners in all municipal matters was vested in the Commissioner of division. It seemed to him (Rajah Joteendro Mohun Tagore) that these sections were not at all consistent with the principle of real self-government. He would here take leave, however, to say that it was on the assumption that the people through their representatives were to have the full control of municipal matters, that provisions for several new taxes and responsibilities were introduced in this Bill. Now, he did not for a moment contend that the majority of municipalities were advanced enough to receive the principle of self-government; on the contrary, he thought there were very few municipalities in which the system of self-government could be safely introduced. What he would say was, that if the experiment was worth trying, it ought to be tried fairly or not at all. If the Council was disposed to give a fair trial to the elective system, he thought the hon'ble member in charge of the Bill should be requested to frame a procedure as to the details, and after

it had been approved by the Council, it might be made a part of the Bill. If on the other hand the Council in its wisdom considered that it was not advisable to give such independent authority to municipalities, he thought that any mention of the elective system should be altogether omitted from the Bill, for he would not hold out to the people hopes that were not destined to be realized.

The Hon'ble MR. BEAUFORT said that it appeared to him that no reason for omitting from the Bill the power to cause Commissioners to be elected could be found in the fact that the Bill did not go so far as the hon'ble member desired: it might answer well in one place and fail in another, and it appeared better to leave a discretion to the Government to frame rules which would suit the various communities in which the system might be introduced. For his own part he did not see why the fact that the Magistrate was to be the Chairman, or that the Commissioner of division should have a general control over the proceedings of municipal bodies, should interfere with the advantages which were expected to be derived from the elective system. It appeared to him that there was no doubt that the Chairman of a municipality should be the foremost person in the place, a man who was able to advise and lead the other Commissioners to adopt measures of the greatest benefit to the community at large, and the Magistrate probably in the great majority of places would be the person most fitted to undertake that duty. The elective system altogether would be so entirely novel to municipal bodies in this country, that he might say it was quite uncertain what would be the result and who would be elected,—whether the electors would choose the best men in the place, the most respectable or the richest, or whether they would choose men from the lower classes. It had been said by some gentlemen of great respectability that they could not go round and canvass for votes as was done in other countries, and therefore that they would not be elected; that the rural classes would elect people from amongst themselves; and that the experiment would prove a failure. He did not think that it would be so; he believed that the people would be ready to elect respectable men if they put themselves forward for election.

As regards the control of the Commissioner of division and the Government, he thought that it would be a very mistaken policy if we now introduced the system of election without at the same time providing the means of checking possible errors and mistakes and misplaced enthusiasm, and that there ought to be rules, such as were introduced, to afford the means of checking and regulating the action of all these municipalities. He therefore disagreed with the objections that had been raised by the hon'ble member.

The Hon'ble MR. WYMAN said it appeared to him that the amendment was really opposed to one of the very principles of the Bill. It was never intended or supposed that this Bill was to provide a pure system of election: it was simply an experimental measure, and because it did not give to the people in this country the free institution which existed in England, it was not fair to charge the Bill with being a farce, because it was an attempt to grow up by gradual means the confidence which would permit a more thorough adaptation of the system of election

which the Government seemed to have (and he thought most justly) so much at heart. To take away from the Lieutenant-Governor the power of selecting the municipalities to which the system should be applied would be to probably permit of the general application of a principle which would be very undesirable; but to place the power of applying the system as the Lieutenant-Governor found it desirable, was to give him the power who had the best opportunities of knowing the circumstances of the people of the country. Mr. Wyman thought that the Bill taken as a whole, though doubtless it was imperfect in respect to the partiality of the system of election, was the most liberal measure which could be given to the people, and if it was found that it did not go far enough, it was quite within the province of this Council to amend and improve it; because it was not perfect, was no reason that it was not an improvement on what had gone before. He looked at the partial application of the system of election as an advance in the right direction, for which the people, he was sure, would hereafter be grateful to the Government.

The Hon'ble THE ACTING ADVOCATE-GENERAL said he desired to offer a few remarks upon the motion before the Council. It appeared to him that the hon'ble member had put the amendment in an alternative form. He said it was intended by the Bill that the system of appointing Municipal Commissioners should be elective, and that that system had not been carried out. With reference to that the hon'ble gentleman had himself given a satisfactory answer, which furnished a reason why a purely elective system had not been carried out in the Bill; because he admitted that municipalities had not sufficiently advanced to be able to undertake the task of self-government by election. It followed that the first branch of the objection altogether failed.

Then the hon'ble member contended that if we were not to have a purely elective system, it should not be brought into the Bill at all, and should be altogether excluded; otherwise, he said, that he and those who agreed with him would have reason to regard the power given to the Lieutenant-Governor under section 15 as merely illusory and delusive. Now he took it, as explained by the hon'ble member in charge of the Bill, that there might be places in which, notwithstanding the experience of the hon'ble member, there might exist the capacity and power of conducting municipalities under this principle of election. It appeared to the Advocate-General that it would be unfair to deprive such a municipality (should the Lieutenant-Governor be satisfied that such a municipality could be governed upon the elective principle) of that principle of self-government upon which the hon'ble member himself admitted that this Bill ought rightly to be founded. It was impossible to say *a priori* that the sanction which the governing body would be entitled to give would ultimately turn out to be illusory and delusive, and it appeared to him that that was an argument which carried with it no weight at all. In legislating in this matter we must not believe, as His Honor the President had very properly observed, that the Government of this country was so singularly prejudiced against the people as to be disposed to do everything that it could to the injury and wrong

of the people. No such assumption should be made. The Advocate-General said that on the contrary fairness and honesty of conduct should be attributed to those to whom power was intrusted, and on that assumption there could be no possible objection to the provisions of section 15, which allowed the governor of the province to say what were the places in which the elective system should be adopted.

It further appeared to him that the objection that the municipality was to be under the Magistrate entirely seemed not to have much foundation, because by section 18 it was provided that the Commissioners should elect their own Vice-Chairman, subject to the approval of the Lieutenant-Governor, and it should be lawful for the Chairman to delegate all his duties to the Vice-Chairman, who might not be a Government official.

With regard to the control of the Commissioner of the division, it appeared to him to be a very salutary provision. It would perhaps be out of place for him here to refer to the dissent appended to the report of the Committee by one of its members, Baboo Digumber Mitter; but if one could refer to the principle upon which that dissent was framed, it would furnish sufficient reason for giving such a power of control. For instance, a tank could not be dug without the consent of the Municipal Commissioners, and if the Commissioners refused their consent without sufficient grounds, how was the person aggrieved to obtain redress? It was with the object of preventing the capricious exercise of power by the Commissioners that this right of control was vested in the Commissioner of the Division. It appeared necessary and proper to control discretion, which might at times be capriciously exercised; and therefore to put a check upon the proceedings of the Commissioners in the hands of a person who must be presumed to have some knowledge of the locality, seemed to be a salutary provision.

On these grounds he submitted that the amendment before the Council should be negatived.

His Honor the President said that the arguments of the hon'ble member who had moved this amendment had been so ably and well met by the hon'ble member opposite (Mr. Wyman) and by the learned Advocate-General, that it would not be necessary for him to say much. But this part of the Bill was so important, and the discretion given by section 15 to the Lieutenant-Governor was so great, that he thought it right that he should say a word or two upon the subject. The speech of the hon'ble mover of the amendment appeared to His Honor to be two-edged; for he could not make out whether he would have a more complete and compulsory provision upon the subject of election, or whether he would have none at all. His Honor would have been much better pleased if, instead of moving the omission of this clause, the hon'ble member had thought fit to propose a clause which should provide for election in a manner more satisfactory to himself and more likely to carry into effect the points in regard to which a discretionary power was vested in the Government. For his own part he would say that if the hon'ble member had proposed an amendment of that character, he should be inclined rather to err on the

side of too great liberty than on the side of too great caution: he would rather try the experiment of throwing the young municipalities into the water and telling them, "You may swim if you can," than tell them to wait until they learned to swim. But the case put by the hon'ble member was simply this, whether the elective system should be tried at all or not. His Honor thought that the hon'ble members who had spoken before him had shown clearly why it would not be possible to introduce into the Bill more definite provisions regarding the elective system. It would not be possible in the present stage of affairs in the country to lay down a definite rule that municipalities should be elective under certain conditions and under certain fixed rules. The matter was to a great degree experimental. In some municipalities he hoped the system of election could be completely introduced, in others only partially; and there might be some in which it would not work at all. It appeared, therefore, that the only way of getting out of the difficulty was to intrust a discretionary power to the Government. He could only say for himself that so long as the administration remained in his hands, he would pledge the Government most completely and thoroughly to give these clauses the widest possible scope and effect. As he had more than once said, he thought that in a country where political freedom was impossible, municipal freedom was most desirable. Although there were many places in which the elective system might be attended with some inconvenience and drawbacks, he believed that on the whole its advantages would be very great, and that it would be attended with good results. He had been very much influenced by the consideration that although municipal institutions had died out in Bengal, still self-governing municipalities had been for thousands of years the very basis of Indian society. He was therefore most desirous that the principle of self-government should be tried, and he should not hold back in trying it: he should not make it a farce, but should see that in the municipalities in which it was introduced, it should, as far as possible, be made a reality and not a sham.

He would say one word more as regards the further points which had been alluded to. The Advocate-General had very truly pointed out that power was given to the Chairman to delegate his duties to the Vice-Chairman. His Honor hoped that in many cases, although the Chairman might be present, he would delegate his powers to a competent Vice-Chairman. As soon as municipalities were established, and as soon as they could stand alone, he thought that the responsibilities of the Magistrate should be delegated to an elective Vice-Chairman. But very much more than that remained. The Council would remember that the municipalities where the Magistrate was resident were comparatively few. In many places all over the country there was no resident Magistrate. If the Council would look to the provisions of the Bill they would find that not only on the delegation of the Magistrate, but also in his absence, the Vice-Chairman would exercise the full powers of the Chairman. The consequence would be that in many municipalities where there was no resident Chairman, the Vice-Chairman would be for most purposes the Chairman; and the

most ample opportunities for self-government would be left to the people in those municipalities.

As regards the control of the Commissioner of division, he believed that the hon'ble mover of the amendment would acknowledge that the Commissioner was a very high officer, whose authority extended over a vast tract of country, and that it was hardly possible, and not at all probable, that his interference would be carried into minute matters. His Honor believed that that control would in no practical degree interfere with real self-government, and that it was only a necessary provision to guard against possible abuses of the powers of municipalities.

Under these circumstances His Honor hoped that the Council would see fit to accept the provision in the Bill and not accept the amendment by which the hon'ble member proposed to strike out the whole elective principle.

The Hon'ble Rajah Joteendro Mohun Tagore said he did not object to give a discretionary power to the Lieutenant-Governor as to introducing the elective principle into any place; of course that was a discretion which the Lieutenant-Governor should properly exercise. What he contended for was, that when the system of election was introduced into any place, to give the system a fair trial the people should have sufficient scope to act independently, and that their action should not be qualified in the manner proposed in the Bill. Under such circumstances the elective system might be well conceded, otherwise it would not be a system of self-government.

His Honor the President said it was certainly true that in addition to the power reserved to the Government of introducing the elective system or not, as it thought fit, a very wide power indeed was given in regard to the mode in which the elective franchise was to be exercised. It would be left to the Lieutenant-Governor to decide what was to be the franchise, who was to vote, and how he was to vote. In regard to these matters His Honor would pledge himself to make the election as free and wide as possible. The hon'ble member need not fear that the Lieutenant-Governor would too much restrict the franchise,—that he would make it too aristocratic; on the contrary he would make it as wide as was compatible with safety and the well-being of municipalities.

The motion was then negatived.

Section 13 provided that the Municipal Commissioners appointed or elected should continue in office for "three" years.

The Hon'ble Rajah Joteendro Mohun Tagore moved the substitution of the word "five" for "three." He thought that three years was too short a period, especially when taken in conjunction with the provisions of section 16, under the operation of which one-third of the Commissioners were to retire after the expiration of the first year of their appointment or election. It was true that the retiring Commissioners might be re-elected, but still he thought it would not be worth a person's while to undertake the duties of a Commissioner for so short a period as three years.

The Hon'ble MR. BEAUFORT said it appeared to him better to fix the period of three years for the tour of office, because that period would allow sufficient time to the electors to ascertain whether the person elected was an efficient Commissioner, and there would be no difficulty in re-electing the retiring Commissioners. The object of section 16 was simply to introduce the system of rotation of members; in all other cases the Commissioners appointed or elected would continue in office for three years, and he thought that that was a sufficiently long period, especially when taken in conjunction with the optional power of re-election.

HIS HONOR THE PRESIDENT said he must say that it appeared to him that three years was a quite sufficient period of time and long enough to act as a test of the popular favor. It seemed right that after that period an elected Commissioner should again go to his constituents for re-election.

The motion was then negatived.

On the motion of Mr. BEAUFORT the following words were added to section 15 to provide for the time that must elapse between the introduction of the Act and the appointment or election of the Vice-Chairman and Commissioners:—

"It shall be lawful for the Lieutenant-Governor to appoint the Vice-Chairman and Commissioners holding office in any place under the District Municipal Improvement Act, 1864, or the District Towns' Act, 1868, at the time of the extension of this Act to such place, or any other persons, to be *ad interim* Vice-Chairman and Commissioners pending the election of Commissioners under this section."

The motion was agreed to.

Section 18 related to the appointment of Vice-Chairman.

The Hon'ble MR. BEAUFORT moved the insertion in this section, after the word "Commissioners," in line 11, of the following words:—

"Provided also that the present salaried Vice-Chairman of any municipality, who has been appointed by the Lieutenant Governor under the provision of section 8 of the District Municipal Improvement Act, 1864, shall continue to hold the office till he resigns or is removed with the sanction of the Lieutenant-Governor."

The object of this amendment, he said, was merely to meet the case of the Vice-Chairman of the Suburban Municipality and of any other Vice-Chairman who might have been appointed under similar circumstances. Under the terms of his appointment the gentleman so appointed would enjoy office during the pleasure of Government, but if this section were passed as it stood, it would be open to the Commissioners to elect some other person to be their Vice-Chairman.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said he believed that as the Bill stood the only power which the Commissioners possessed was the power of electing their own Vice-Chairman, as the Chairman would be either the Magistrate of the district or the Magistrate of a division of a district, and if under any circumstances that power was to be taken away from the Commissioners, he thought it would be rather hard.

His Honor the President said that this was not a matter before the Government when the Bill was drawn. The wording of the present amendment was distinctly confined to a salaried Vice-Chairman, and would not affect an honorary officer. As far as he was aware, the amendment would only affect the single case of the Suburban Municipality. It had been submitted to the Government that under the existing law the Government had exercised the power of appointing a Vice-Chairman holding office during the pleasure of Government. The man so appointed had no doubt given up other prospects in life and other pursuits; and His Honor was inclined to think that it would be rather hard if a gentleman holding a salaried office under the appointment and subject to the pleasure of Government only, should find himself thrown out of employment if he should not happen to be elected. It was a saving of vested rights. His Honor was not generally well disposed towards what were called vested rights; but in some cases, when the disallowance of such rights would operate harshly, he thought that those rights might be respected. He believed that as regards the present question the case to be provided for was that of a gentleman who had given satisfaction in the discharge of his duties; and he was given to understand that the only change that the Commissioners had made in the office since the appointment of that officer had been to raise his salary. It did not therefore seem probable that the Municipal Commissioners of the suburbs would, under the operation of this Bill, have displaced their Vice-Chairman. At the same time the position of that officer would be very materially changed, for instead of being a permanent officer he would find himself subject to election from time to time and liable to be turned out. However, he desired to leave the question entirely in the hands of the Council.

The motion was then agreed to.

Section 31 related to the appointment of overseers, clerks, and subordinate officers.

The Hon'ble Mr. Beaufort said he had two amendments to move in this section. The first was to insert the words "at a meeting" after "Commissioners" in line 18. The object of this section was to provide for the appointment and removal of subordinate officers of the municipality, and power was given to the Chairman to appoint and remove such officers subject to the rules made by the Commissioners at a meeting. The section went on to provide that the order of the Chairman for the appointment or removal of any such officer whose salary exceeded fifty Rupees should be subject to the order of the Commissioners, which obviously meant the Commissioners at a meeting; for otherwise, as the words stood, the order of the Chairman would be referred to himself as representing the Commissioners. The Bill gave certain powers to the Commissioners, and other powers to the Commissioners at a meeting; the former might be exercised by the Chairman as representing the Commissioners, but the latter could not be exercised by the Chairman except for the purpose of carrying into effect the orders passed at a meeting.

The motion was agreed to.

The Hon'ble MR. BEAUFORT then moved the addition to the section of the following words:—

"All officers and servants who may, at the time of the extension of this Act to any place, hold office therein under the provisions of the District Municipal Improvement Act, 1864, or of the District Towns' Act, 1868, shall be deemed to have been duly appointed under this Act, and shall continue to hold office subject to any action which may be taken under this section."

The motion was agreed to.

Section 38, clause (*a*), provided for the imposition of a tax on persons according to their means and property.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said that with regard to this tax he thought it very necessary that a limit should be put to the incidence of the tax on individual holders. He was aware that at the end of the chapter there was a section which put a limit on the maximum tax on each individual on the average of the whole population in the municipality, but he thought that that was not quite enough. Under that clause half the estimated cost of the municipality might be put upon one individual, and the other half on the remainder of the population, and still the average rate might be preserved; but that certainly would not be a just distribution of the incidence of taxation. He would therefore move to add the following words to clause (*a*):—

"Provided also that the amount assessed in respect of any one holding in a first class municipality shall not be more than ten rupees per mensem, and in a second class municipality shall not be more than five rupees per mensem."

He might add that the principle for which he contended was not new, as a similar provision had been adopted in Acts VI of 1868 and VI of 1870.

HIS HONOR THE PRESIDENT said it seemed to him that if a man was fortunate enough and rich enough to hold half the municipality, it was quite right that he should pay half the tax imposed upon that municipality. He did not see why they should limit the taxation in the way proposed.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE observed that there would be no objection if the tax was a tax upon the holding; but this was a tax upon persons according to their property and means. If a man was in very good circumstances and had only a small holding in the municipality, he should not be liable to an unlimited amount of tax simply because he was rich.

HIS HONOR THE PRESIDENT observed that a man could be charged on his means only in one municipality, in which he resided. If he had property in any other municipality, he could only be charged on that property as provided in the latter part of clause (*a*).

The Hon'ble MR. BEAUFORT said that Baboo Digumber Mitter, who was a member of the Committee upon this Bill, had put upon record some other objections to the tax upon persons. His objection was somewhat opposed to that made by the hon'ble member. He objected that there was no minimum: the hon'ble member objected that there was no maximum. It was said that a tax upon persons

was a kind of income tax, and, as Baboo Digumber Mitter observed, that it would assume the character of the worst form of an income tax. To this Mr. Beaufort would remark that although the observation contained some truth, yet an essential difference might be found, first in the absence of all inquisitorial statements of which such complaints had been made; and secondly, in the lightness with which the tax must fall on any one individual; and also that the introduction of the maximum and minimum would tend to introduce the unequal incidence of which so much complaint had been made. You could not say that a tax was equal in its incidence if you prevented a man from paying a proportional rate upon all his property,—if you said that a person should not be assessed upon the whole of his means, but only on a portion, although other persons were assessed upon the whole of their means. He would further observe that there *was* a minimum provided; for the poor were exempted. It appeared to him therefore that there was no real objection to the clause as it stood.

The motion was then put and negatived.

Section 38, clause (*f*), was as follows:—

"In any municipality duties on articles entering the limits thereof or brought into markets within the said limits."

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved the omission of the words "or brought into markets within the said limits." He said that the levying of a tax upon the sale of goods in a market would operate hardly upon the vendors of articles. Sometimes articles were brought into a market for three or four days without a sale being effected, and those articles would be taxed three or four times over. Then again the collection of this tax would be in the hands of the underlings of the municipality, and would give them the means of practising oppression over the poor vendors. Besides it would be a direct interference with private rights, for to avoid the tax the vendors would not resort to the *haths*, but would prefer to expose their goods for sale on some roadside, as was the practice now in places where *haths* did not exist, and as a consequence the income of the owner of the *haths*, in the shape of rents which he received from the vendors, would necessarily suffer.

The Hon'ble MR. ROBINSON said it appeared to him that the clause as worded would make articles liable to a double duty, because the duty was a duty on articles entering the limits of municipalities *or* brought into markets within those limits. Who was to trace particular articles? they might be brought into the municipality on one day and taken into a market on another.

HIS HONOR THE PRESIDENT said certainly the intention of the Government and the Committee was that this should be an alternative tax. HIS HONOR himself preferred a free market; but the Committee had accepted this tax, and he thought rightly, on the principle that under certain circumstances if a municipality preferred indirect taxation they might have it in the form of an octroi. But it was represented that the towns in Bengal were so straggling, that to put a chain of custom-house officers round a town would be very vexatious,

and it was suggested that it would be sufficient to tax the articles coming to the market. His Honor would leave the hon'ble member in charge of the Bill to explain whether the words of the clause carried out that object. Then as to the argument that articles brought into a market might not be sold, His Honor believed that as the Bill was originally drawn the tax was to be imposed on articles *sold*; but the Committee differed from that opinion, and after full discussion they considered it more satisfactory to adopt the clause in the form in which it now stood.

The Hon'ble Mr. Beaufort said section 38 was merely an enumeration of all the taxes that might be imposed under the Bill. It did not profess to provide rules for the imposition of those taxes. It merely said that the Commissioners might impose one or more of such taxes. He thought it might be presumed that no municipality would elect to impose first an octroi tax and then a tax for bringing the same articles into a market. The rules for the different classes of taxes were detailed in the Bill. Then as to the general principle of this tax. Such taxes, he believed, were collected in every village in the country, and very often in two or more rival *haths* in the same village, which led to the feuds which were so common in some parts of the country. Whether the imposition of such taxes was legal or not, was a question into which the Council could not enter at present; but it seemed to him absurd to say that the municipality could not realize without oppression the dues which every landholder was collecting week by week all over the country without complaint. As to interfering with private rights, it appeared to him that market-dues might be as much the right of a municipality as of any body else: but about the general principle of the clause he thought there could be no doubt whatever.

The Hon'ble Mr. Wyman said it was never the intention of the Select Committee that this clause should bear any other interpretation than an alternative one; and as to the working of the tax, it seemed to him that that was a matter which would be regulated by the bye-laws to be passed under the Act. He thought it perfectly plain that the tax under this clause was to be either a tax on articles entering municipal limits *or* on articles brought into markets.

The Hon'ble Rajah Joteendro Mohun Tagore had a few words to offer in explanation; he did not mean to say that the proprietors of *haths* had any right to market-dues, but he thought they had certainly a right to collect rents from the vendors for the use of the grounds.

The motion was then put and negatived.

Section 38, clause (*h*), provided for the imposition of duties on boats moored within the limits of municipalities.

The Hon'ble Rajah Joteendro Mohun Tagore moved the omission of this clause. He said it was not unknown that boats were generally moored along land which belonged to private parties, and as the large stakes which were put down to secure the boats caused injury to the land in places where the river was encroaching, a fee was levied by the riparian proprietor as compensation for the

damage which he sustained by the mooring of boats and for the use of his land. He did not see how the municipality could lay any claim to those fees, or to tax boats so moored. Suppose the proprietors of the land refused to allow the use of their land for the mooring of boats, they could not be compelled, without any compensation, to allow that which would in many instances be injurious to their interests. The effect of the imposition of such duties would, he feared, be endless complication between the proprietors of the lands and the municipal authorities, and the interests of trade would generally suffer.

His Honor the President said in respect to the propriety of this clause authorizing the imposition of a duty on the mooring of boats, he had no hesitation whatever. There were in Eastern Bengal many places which consisted half of houses and half of boats: the town of Serajgunj was all boats and no houses, he might almost say. Where you had a great place of trade, or a floating city where the people lived in floating houses and transacted their business on floating shops, and where you wanted wharves and roads for the convenience of trade, you must tax the boats which brought the traffic. There was no means of raising any tax in such towns: the town consisted of a range of boats along the shore. The real town was the river. Therefore the effect of this clause would be that if people brought their boats to trade at a purely water town, they would be subjected to a fair and reasonable tax; and in other towns the boat traffic might pay a fair proportion.

As regards the objection as to private lands, it seemed to His Honor that that matter would in no way be affected by this tax. It seemed to him that in reality the zemindars at present in very many places raised an illegal tax upon boats passing up and down the river. Wherever there was an exclusive private right in land, the zemindar was of course entitled to say "You shan't use my land without paying for it;" but all that the Bill said was that if a man brought his boat and moored it in public water which lay within the limits of a municipality, then the boat should be liable to pay a tax to the municipality which constructed wharves and roads and afforded facilities for boats and trade. His Honor thought that this was a reasonable provision for taxing the floating part of the community in the same manner as you taxed the people on the land.

The Hon'ble Mr. Beaufort said he would add one word, and that was that there was no possible reason why municipalities should not take dues for the use of land belonging to them; but unless it were provided in the law that they might impose mooring duties, they would not be able to do so.

The Hon'ble Rajah Joteendro Mohun Tagore said he thought it should be laid down that the levying of these dues should in no case interfere with the right of private parties to levy fees for the use of their own land.

The Hon'ble Mr. Robinson inquired whether boats mooring (say) for one night within the limits of a municipality were to be liable to the tax.

His Honor the President said that boats coming within the limits of a municipality and mooring for the night enjoyed the protection and advantages of the town: they obtained the protection of the town police instead of being liable to plunder outside, and might reasonably be asked to pay for the protection they enjoyed. His Honor had no doubt that the rules would provide for this. It might not be thought desirable to tax at all boats that did not moor for more than a day, although theoretically no doubt they were taxable.

The Hon'ble Mr. Robinson said that it would be a serious thing if the provisions of this clause were to apply to the whole of the traffic upon the river in this way. It would be a serious impost and a serious bar to traffic if a boat which was moored for half an hour was made liable to be taxed. He quite agreed that boats moored for the night should be liable to the tax, but it would be a serious tax if every boat mooring for an hour were made so liable.

The Hon'ble Mr. Wyman said that this clause met the difficulty which he had expressed in Committee. Boat traffic receiving the protection of the municipal police, and remaining within the limits of a municipality for the purposes of trade, should pay something for the protection and advantages they enjoyed. The persons living upon the land should not have to pay every thing. The matter had been very carefully discussed by the Committee, and he thought it was generally felt that persons obtaining their livelihood on the river should share the municipal burden with those on the land, seeing that it was for the protection equally of the one as the other that those burdens were imposed. If the zemindar had a right to levy a tax upon boats mooring upon his land, the present Bill would not interfere with those rights; but surely the municipality had an equal claim in respect of trade within their limits. He thought this tax would be a large and just source of income to towns. As to the difficulty stated by the hon'ble member opposite (Mr. Robinson), since it was never intended to impose the tax upon boats moored only for an hour, for the purpose of obtaining food, Mr. Wyman thought the objection raised was hardly a practical one. It was not possible to legislate for details such as these, but sufficient protection would doubtless be provided in the municipal bye-laws to meet any such difficulty.

His Honor the President said he thought the hon'ble member on the right (Mr. Robinson) had hit upon a difficulty. His Honor quite agreed that it would not do to allow a municipality to turn this tax into a transit duty. Nothing must be more carefully guarded against than that. But this was one of those points the regulation of which was to be intrusted to the Local Government. The rules which would be framed by the Municipal Commissioners would not be valid unless they were sanctioned by the Lieutenant-Governor, and the Lieutenant-Governor would not be a person who would have any concern in local interests: he would look to the good of the country in general,—that was to say he would take care that these duties should not be turned into a transit duty. He would see that the tax was confined to the raising of a small rate for which a *quid pro quo* was furnished. His Honor thought that the regulation of

this matter must be left to the Government, who would see that the abuse of turning this tax into a transit duty was not permitted.

The Hon'ble MOULVIE ABDOOL LUTEEF said it appeared to him that there was one difficulty in connection with this section, viz. the detention to which boats would be subjected for the purpose of collecting the tax. Sometimes boats moored at towns merely for the purpose of making small purchases. If they were detained there for an hour or two for their own purposes, they might be further detained for six or eight hours for the collection of the tax. He thought therefore that in framing the rules for the collection of this tax the hardship which such mere callers might suffer should be taken into consideration.

The Hon'ble THE ACTING ADVOCATE-GENERAL said he thought the sections under which this tax would be levied sufficiently provided for the difficulty raised by the hon'ble member on the right (Mr. Robinson); they provided for the levy of rates according to the time during which the boats were moored.

The Hon'ble MR. ROBINSON said he would assure the Council that his objection was not a fanciful one. He had no objection to this tax in itself; but if its operation was not most carefully guarded, it would become a most intolerable tax upon the trade of the country.

The Hon'ble MR. BERNARD said, to show that the Select Committee did not intend to tax boats unfairly, by section 81 it was provided that all through traffic should be exempted from the octroi duties; and they expected that the same principle would be carried out in regard to the tax upon boats, but they saw no way of providing for this difficulty in the Bill.

The amendment was then negatived.

Section 43 provided for the assessment of persons who were without authority omitted from the assessment list, or whose liability to assessment accrued after the preparation of the list, and directed that notice of such "increased" assessment should be given to the person assessed.

On the motion of Mr. Beaufort the word "increased" was struck out, as the section applied to new assessments and not to increased assessments.

Section 45 related to the tax upon buildings, and exempted buildings used exclusively as places of public worship or applied solely to charitable purposes.

On the motion of Mr. Beaufort a verbal amendment was made by substituting the word "houses" for the word "buildings." He pointed out that the "house" under the definition in section 3 included the "building."

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved the insertion of the words "and arable lands" after "purposes," so as to exempt arable lands from the tax.

The Hon'ble MR. BEAUFORT said he would move as a counter-amendment that the following words be added to the section:—

"Provided that the annual value of any arable land shall be deemed to be one-half of the annual rent at which such land may be reasonably expected to be let."

The Hon'ble MR. BERNARD said it might be explained that lands taxed by municipalities were exempted from Road Cess under Act X of 1871 of this Council, and if arable lands within municipal limits were exempted from taxation under this Bill they would escape taxation altogether. The amendment which the hon'ble member in charge of the Bill had proposed would reduce the rate on arable lands in municipalities very nearly to what they were assessed for Road Cess outside municipalities.

HIS HONOR THE PRESIDENT said roads outside municipalities were to be made by those taxed outside by the District Road Cess, and inside municipalities by municipalities; and it was only fair that arable lands within municipalities which were exempted from the District Road Cess should pay a tax such as the same lands outside municipalities paid under the Road Cess. He quite thought with the hon'ble member that it would be hard that arable lands within municipalities should pay a tax as high as that paid by houses and shops; and therefore it appeared to His Honor that the half rate which the hon'ble member in charge of the Bill had proposed would meet the difficulty.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said that after the explanation that had been given he would withdraw his amendment.

The Hon'ble MR. BEAUFORT's amendment was then agreed to.

Section 58 exempted hackney carriages in the suburbs of Calcutta from the operation of the tax upon carriages and animals.

The Hon'ble MR. BEAUFORT observed that this section had been inserted by him under a mistake, in order to provide against a double tax upon certain carriages. He had since discovered that these carriages in Calcutta not only paid the registration fee under the Hackney Carriage Act, but also the license tax under the Municipal Acts. Therefore there was no reason why they should not pay a tax upon thesame footing in the suburbs as they paid in the town of Calcutta. He moved that this section be omitted.

The motion was agreed to.

Section 62 provided as a penalty a fine not exceeding three times the tax on all carriages and animals for which a license should not have been taken out.

The Hon'ble Mr. BEAUFORT said that this section provided a penalty for keeping a carriage without a license; but it did not say whether the payment of the fine was "in lieu of the license fee," or in addition to it. As there might be some doubt upon this point he would move the insertion of those words after "fine" in the 4th line of the section.

The motion was agreed to.

Similar amendments were made, on the motion of Mr. Beaufort, in sections 69 and 76.

Section 97 provided that the Lieutenant-Governor "may" make over to the Commissioners any existing toll-bar or gate within the limits of the municipality.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said that it would be imperative upon municipalities to maintain all the roads within their municipalities, and he thought it would be but fair to them that any tolls which were imposed upon those roads should be made over to them. He would therefore move the substitution of "shall" for "may."

HIS HONOR THE PRESIDENT said that he was quite ready to pledge himself that the Government would not for their own purposes maintain any toll within the limits of a municipality, unless it were upon a road maintained by Government as a provincial or imperial road. It was however necessary to give a discretion to the Government, as they might wish to abolish tolls altogether.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said as it was stated that there was no intention to maintain tolls within municipalities for any other than municipal purposes, he was quite willing to withdraw his amendment. But he thought that if tolls were so maintained they should be made over to the municipality.

The motion was then by leave withdrawn.

On the motion of Mr. Beaufort a verbal amendment was made in section 124.

Section 131 declared what should constitute the Municipal Fund, and provided, amongst other things, that the fund applicable to police purposes mentioned in "section 57, Act XXI of 1857 (to make better provision for the order and good government of the suburbs of Calcutta and the station of Howrah)" should be deemed to be the Municipal Fund.

The Hon'ble MR. BEAUFORT said he proposed to omit the words above quoted. Act XXI of 1857 was one of the Acts to be repealed by this Act, and therefore it was unnecessary to retain those words.

The motion was agreed to.

Section 133 declared the purposes to which the Municipal Fund might be applied, amongst which were the construction, repair, and maintenance of roads, wharves, embankments, channels, drains, and bridges.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said he believed it was not unknown that in some stations large embankments were maintained by the Government; they were works of such great magnitude that they could not possibly be maintained by municipalities, and if there was no provision in the Bill to the contrary, the Government might withdraw from the duty of maintaining those embankments and expect the municipalities to undertake the work. The same remarks applied to the maintenance of bridges. Take for instance the Kidderpore and Bally Khal bridges. If the Government were to withdraw from the duty of maintaining those bridges, the responsibility would be thrown on the municipalities within whose limits they were situated. But it would be admitted that these municipalities, especially the latter, were too poor to maintain such great bridges. He would therefore move to insert after "embankments" the words "except such as have been maintained by Government," and to substitute "culverts" for "bridges."

The Hon'ble MR. BEAUFORT said he thought the hon'ble member had misunderstood the object of the section, which was to declare upon what objects the Municipal Commissioners might expend the Municipal Funds, subject to certain rules. It was necessary to insert in this section all the objects upon which the Municipal Funds might be expended, for otherwise the Commissioners would be debarred from expending their money upon some work which they might be prepared and willing to undertake. Take the case of the station of Berhampore, which was protected by small embankments along the face of the river now maintained by the Government. If that place became a municipality, it appeared to him that there was no possible reason why the Municipal Fund should not be expended in the repairs of the embankment. If the amendment was adopted, the municipality would be prevented from expending money for that purpose. Mr. Beaufort would also object to the substitution of "culvert" for "bridges." Culvert was a vague term: a bridge included a culvert.

The Hon'ble MR. SCHALCH said he had a decided objection to the words of the amendment. It included *all* embankments. If that were intended, it would follow that although the Government had maintained many embankments which they were not bound to maintain, they would henceforth be bound to continue to maintain them. If any such amendment was to be introduced, he thought it should be so framed as to include only those embankments which the Government were bound to maintain. He himself did not see the necessity of the amendment; but if any amendment were introduced, he thought it should be carefully guarded in the way he had specified: the phraseology, as the amendment at present stood, was to bind the Government to keep up embankments which they were not bound to maintain.

HIS HONOR THE PRESIDENT said it appeared to him that this was importing a discussion which properly belonged to another Bill. The clause under consideration was simply a clause to enable municipalities to maintain embankments. The passing of such a clause as was proposed would not interfere with any obligation which might be imposed on the Government by the Embankment Bill. It was proposed in that Bill to say that the Government should maintain certain embankments, and HIS HONOR had no doubt that the hon'ble member would look after the interests of municipalities when that Bill came up for consideration. Perhaps, therefore, the hon'ble member would allow the matter to stand over till the Embankment Bill came before the Council.

The motion was then by leave withdrawn.

On the motion of Mr. Beaufort the following clause was added to the section:—

(6). "Any outlay that may be necessary for carrying out the purposes of this Act."

Section 134 enabled a municipality, with the sanction of the Lieutenant-Governor, to make contributions to other municipalities for certain purposes.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said he did not understand by what kinds of work a municipality in one district could benefit a municipality

in another district. He could quite understand municipalities adjoining one another undertaking works in common, and he thought the granting of contributions for such purposes should be decided according to the benefit the municipality would derive from the contributions which they made. But under this section a municipality might contribute its funds to any municipality in any other district, however distant. That seemed to him to be wrong in principle, especially considering that the control over the expenditure of its funds should be in the hands of the municipality. A municipality contributing to another municipality could have no control over the municipality to which they contributed. He therefore took exception to this section and moved that it be omitted.

The Hon'ble MR. BEAUFORT said it appeared to him that the object of this section was sufficiently clear. He would illustrate it by giving an example. The example nearest to them was that of the Suburban Municipality, who wished to introduce into the suburbs the water which was brought down to Calcutta. The cost of pipes to carry the water into the suburbs would certainly not be paid by the Calcutta Municipality, and must be paid by the people of the suburbs who were to make use of the water. The same remarks would apply to a railway which a municipality wanted to connect with their town by a short feeder road. If a municipality was not allowed to contribute for the making of such roads, there would be nobody to do it, and he saw no reason why municipalities should not so contribute.

The Hon'ble MR. BERNARD said the Select Committee had very carefully considered this provision, many representations having been received taking exception to it; some of the members of the Committee had also taken exception to it. As the section was originally drawn, it was more open to objection than it was now. At first it was provided that the Lieutenant-Governor might transfer a portion of the funds of one municipality to any other municipality. As the section now stood, it lay with the Commissioners themselves to propose the transfer and then to obtain the sanction of the Lieutenant-Governor to such transfer. The hon'ble member in charge of the Bill had given one instance exemplifying the operation of this section; others might be adduced. A municipality might be situated two or three miles from a line of railway, between which and the municipality there might be jungle or field land. Surely a municipality ought to be allowed to expend money in connecting itself with a railway station; but unless power was given in the Bill to expend money for such purposes, the municipality could not expend the money. It was only for certain objects that municipalities were allowed to contribute money to other municipalities, and those purposes were merely such as the construction and maintenance of roads, bringing water into a town, and the lighting of roads.

The Hon'ble MR. WYMAN said he thought he was one of the members of the Committee who objected to this clause as it stood in the original Bill; but as the clause was now limited, he could see no objection to it. It left the suggestion for such contributions in the hands of the Commissioners, and the power was

qualified by the provision that the works for which such contributions were made must be calculated to benefit the inhabitants of the contributing municipality. It was quite competent to the Commissioners not to propose to make such contributions, and if they did make such contributions, it could only be with the object of benefiting themselves.

The motion was then negatived.

Section 135 provided for the appointment of officers to inspect the affairs of municipalities.

The Hon'ble MR. BEAUFORT moved that this section be omitted. But he proposed to transfer to section 142 the latter portion of it, and also to provide for the expense of auditing the municipal accounts which had been omitted. He thought it was reasonable that the additional establishment which the Magistrate of the district, who was bound to supervise the municipalities in his district, or the Commissioner of division, who had a control over the municipalities in his division, might be obliged to keep for that purpose, should be paid rateably by the municipalities concerned. He would first move that section 135 be omitted.

HIS HONOR the PRESIDENT said that the effect of accepting the amendment to omit section 135, which the hon'ble member on the right (Rajah Joteendro Mohun Tagore) had put upon the paper, and the amendment of the hon'ble member in charge of the Bill as to section 142, would be that the Government surrendered the power of appointing a salaried inspector at the expense of municipalities. But it was quite necessary that the accounts should be audited, and that the cost of the correspondence which municipalities necessarily entailed should be contributed by the several municipalities in each division or district.

The motion was agreed to.

On the motion of Mr. Beaufort the following words were inserted in section 142 after "direct" in line 10:—

"The expense of such audit shall be paid from the Municipal Fund. The Lieutenant-Governor may direct that the cost of maintaining clerks or other establishments in the offices of the Magistrate of the district and of the Commissioner of division for the audit of accounts, and the requisite correspondence connected with the purposes of this Act, shall be defrayed in rateable proportion from the funds of the several municipalities which may be constituted under this Act in such district or division."

Section 153 provided a penalty on a registrar of births and deaths refusing or neglecting to register births, &c.

On the motion of Mr. Beaufort the words "or shall demand or accept any fee or reward or other gratification as a consideration for making such entry" were omitted as unnecessary, the registrars to be appointed under the Act having been declared, by a clause subsequently introduced, to be "public servants" within the meaning of the Penal Code.

Section 172 provided that none of the provisions of Part X relating to the municipal regulations should apply to any municipality until extended thereto by the Lieutenant-Governor.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said that he did not think that the state of society in second class municipalities was such as to render necessary the stringent rules of sanitation provided by Part X of the Bill, and he considered that it would be great hardship if they were introduced in second class municipalities. He believed it was not the intention of the Government, seeing that the Government had a discretion in extending these rules, to introduce them into any second or third class municipality. But he thought it would be better if such a limitation were introduced in the Bill. It would be seen also that these municipal regulations, with the exception of that contained in section 191, were not introduced in the Acts of 1868 and 1870, and none of these provisions were at present in operation in second or third class municipalities. He would therefore move the addition to section 172 of the words—

"The Lieutenant-Governor shall not extend the provisions of chapter 1 of this part to any second or third class municipality."

The Hon'ble MR. BEAUFORT said that the general object of Part X was to provide all the rules necessary for the conservancy and sanitation and general well-being of municipalities. By section 172 it was provided that no single section throughout this Part should be extended to any municipality without the special sanction of the Government. Under these circumstances he thought it was not necessary to make any exception to the general rule. The Lieutenant-Governor would apply these sections to municipalities on the reports of the municipalities themselves, and those only would be selected which were wanted in each particular place. Some people objected to the introduction of these sections, because the lower classes were used to a certain degree of discomfort in their houses, and therefore did not care to be compelled to get rid of it; but the general principle of them was applicable to all. He thought it would be better to leave the power to the Government to apply these sections as they were required; but as it was quite clear that the sections contained in the first chapter of the Part would never be applied to third class municipalities, which would be established only in rural villages, he was quite prepared to exclude them from third class municipalities, and would suggest the omission from the motion of the words "or second." With regard to second class municipalities, he believed that a second class municipality would often be found in a small but populous town, and that was just the place in which such rules would be required. Therefore he would retain the provision enabling the Government to extend these rules to such places.

HIS HONOR the PRESIDENT said that the Government were prepared to accept the proposal that third class municipalities should be exempted from the operation of this Part; he would therefore first put the suggestion of the hon'ble member in charge of the Bill as an amendment upon the motion.

The amendment having been carried, the motion as amended was agreed to.

Section 196 provided a penalty for bathing or washing animals or clothes in a public stream, &c.

The Hon'ble MR. BEAUFORT moved the omission of the word "public," as the retention of that word would interfere with the provision in the Penal Code with regard to fouling the water of a public spring or reservoir. This section went further, as it applied to water set apart for particular purposes; whereas the Penal Code dealt with the ordinary use of the water. If the word "public" were left out, it would prevent any clashing with the Penal Code. He was indebted for this amendment to his hon'ble friend the learned Advocate-General.

The motion was agreed to.

Section 199 provided a penalty for making unauthorized excavations.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said he believed there would not be found a single house-holder, particularly in a second class municipality, who would not require to make an excavation in his own compound, and this section would therefore work very harshly on the people who built their houses from earth taken from their own land. These excavations occasionally caused a nuisance; but he thought the chapter of the Penal Code relating to nuisances, and the rules in this Bill against causing nuisances within premises, were sufficient. He did not think there was any necessity for preventing people from taking earth from their own land for building purposes, and he would therefore move that this section be omitted.

The Hon'ble MR. BEAUFORT said he thought it would be well to put the Council in possession of the history of this section. It arose out of his own personal experience of the effects of excavations within towns. It was quite true that every man, when he wanted to raise the flooring of his house, dug a hole alongside of it; and no one would object to a method of obtaining earth so convenient to the individual if it did not affect the health of the community. But into this hole all the dirt and refuse of the house was thrown; the rain fell; the contents of the excavation rotted in the stagnant water, and a great deal of malaria was generated. When he was Magistrate of Jessore at a time when no one was willing to reside in it on account of the unhealthiness of the place, he made use of the prisoners (who were then allowed to work out of the jail walls) in filling up every excavation throughout the town, and the consequence was that the healthiness of the place was materially improved. Even without that experience, he thought that no man had a right for his own convenience to make an excavation which would be a nuisance to his neighbours. He admitted that the section as introduced in the Bill might be considered rather too stringent, and that it would be well to modify it, and he proposed to do so by substituting for it the section of which he had given notice and which stood as follows:—

"The Commissioners may cause to be filled up any excavation which is likely in their opinion to be injurious to the health of the neighbourhood. If such excavation shall have been made in any place after the extension thereto of this section within any private premises without the consent of the Commissioners, the cost of refilling it may be recovered from the occupier or owner of such premises."

The latter part of this amended section would not apply to existing excavations or those made with the consent of the Commissioners, and they would have no power to interfere unless the excavation would be likely to injure the neighbourhood. Any man who really had a necessity to make an excavation might apply to the Commissioners for permission to make it. Then as regards the penalty, it was reduced simply to the excavator paying for the cost of refilling it. It was said that in some places there was great difficulty in getting earth to supply the place of the earth that was taken out of the excavation, but in his experience there was always some tank at no great distance which might be enlarged. In Jessore tanks were deepened and enlarged by supplying the ryots with the earth which they required.

The Hon'ble MR. WYMAN said there was an objection to the amendment proposed. It seemed a direct interference with private rights. It appeared to him that section 191 gave ample power to prevent these excavations from becoming dangerous to health. But to say that a man should not dig upon his own land might lead to much hardship and oppression. There might be cases in which the digging of a hole might possibly not improve the health of a town, but might not be so injurious to the health of the neighbourhood as to make it desirable to fill it up. In such cases to make the man fill it up seemed very hard indeed. Where so much suspicion was already existing, to impose by law any thing tending to create additional alarm, should be a matter for careful consideration. Therefore, as Mr. Wyman thought that section 191 met all sanitary difficulties, he submitted that there was no necessity for any provision regarding excavations.

HIS HONOR THE PRESIDENT said he was extremely glad that the hon'ble member in charge of the Bill had proposed to do away with the penal clause in this section. As the provision stood in the Bill it was a very severe one, and His Honor thought the hon'ble member had exercised a wise discretion in modifying it. Possibly the observations that had been made with regard to the vexatious character of the section as it stood in the Bill were not unfounded; but as the clause was now proposed, it was a very innocent clause. It was devoid of all penal character, as the person who made the excavation would at the worst only have to fill it up again; he could not be subjected to anything beyond that. Section 191 might provide for this, but these noxious holes being so common, he hoped the Council would support the amendment.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said that if the cost of re-filling the excavation was to be borne by the person making it, it might cost him so much that it might be impossible for him to meet it. Earth could not always be obtained: it might have to be brought from a distance of several miles; and if a poor man had to re-fill a hole, he might be made to pay for bringing the earth from a distance of four or five miles. The effect would be the same whether he was allowed to make the excavation or not.

The Hon'ble Mr. Beaufort's amendment to substitute a new section for section 199 was agreed to.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE'S motion to omit the section having been put, the Council divided :—

| AYES—2. | NOES—8. |
|---|---|
| Rajah Joteendro Mohun Tagore, Bahadoor. | Mr. Robinson. |
| Mr. Wyman. | Mr. Colvin. |
| | Moulvie Abdool Luteef Khan. |
| | Lord Ulick Browne. |
| | Mr. Schalch. |
| | Mr. Beaufort. |
| | The Advocate-General. |
| | The President. |

So the motion was negatived.

Section 208 gave power to trim hedges and trees bordering roads.

The Hon'ble MR. BEAUFORT said that the amendments which he had put on the paper were proposed in consequence of a report of the Commissioner of Chittagong that the inhabitants of that town surrounded their compounds with fences of a height which greatly prevented the free circulation of air, and he believed the hon'ble member opposite (Lord Ulick Browne) would be able to say from his own experience whether that was the case. The amendments would give the same power of reducing the height of fences, as the section in its present state gave in regard to hedges. He moved—

In line 3, after "trim" to insert "or reduce the height of";

In lines 4 and 10, after "hedges" to insert "fences";

And in line 11, after "trimmed" to insert "or reduced."

The Hon'ble LORD ULICK BROWNE said he entirely confirmed what had been said as regards the obstructions to ventilation in the town of Chittagong. Almost every house was surrounded by an enclosure of matting about seven feet high, and they certainly had an injurious effect on the health of the town.

The Hon'ble MOULVIE ABDOOL LUTEEF said if these fences or mat walls were intended for the zenana, or female apartments of the occupants, it would be a great hardship if the municipality were permitted to interfere in reducing them. He thought this point ought to be taken into consideration, or otherwise we might be interfering with the convenience of the people, and especially of the Mahomedan community.

HIS HONOR THE PRESIDENT said he thought the vast majority of the Commissioners would have an interest in keeping female apartments private.

The Hon'ble MR. BEAUFORT remarked that probably there were very few places in which a provision of this nature would be applicable.

The Hon'ble MOULVIE ABDOOL LUTEEF said where there were two or three-storied houses and the neighbours had lower-roomed houses, they were compelled to erect high mat walls to prevent overlooking.

The Hon'ble MR. SCHALCH observed that the Commissioners would not have the power to interfere with a wall of ten or twelve feet in height, and therefore it would be a hardship to interfere with mat walls of seven feet, especially in the case of zenanas. He thought the section as it stood was sufficient.

The Hon'ble MOULVIE ABDOOL LUTEEF said he had seen it remarked in the papers that the high walls in the King of Oudh's premises at Garden Reach prevented ventilation, but it appeared to him that that could not be helped where there were zenanas.

The Hon'ble MR. BEAUFORT's first and fourth amendments were agreed to.

On the second and third amendments the Council divided:—

| AYES—3. | NOES—8. |
|---|---|
| Lord Ulick Browne. | Rajah Joteendro Mohun Tagore. |
| Mr. Beaufort. | Mr. Wyman. |
| The Advocate-General. | Mr. Robinson. |
| | Mr. Colvin. |
| | Moulvie Abdool Luteef. |
| | Mr Bernard. |
| | Mr. Schalch. |
| | The President. |

These amendments were therefore negatived.

Section 217 provided a penalty for, amongst other things, beating drums or tom-toms, &c., at times and places prohibited by the Commissioners.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved to insert the words "not being private residences" after "places" in line 5 of clause 2. He said that in most Hindu families there were household deities, and it was necessary at times of worship to beat cymbals and gongs. It would be giving the Commissioners too arbitrary power if they were allowed to prohibit the sounding of such instruments at any time and any place they liked. Some consideration, he thought, ought to be shown to the religious feelings of the people.

The Hon'ble MR. BEAUFORT said the object of this section, which was taken from the Acts now in force in Calcutta and Howrah and other places, was simply to prevent people making a noise in their own houses so loud as to be a nuisance to the neighbours. He did not see why, if a Hindu desired to worship in his own house, he should be permitted to cause discomfort to others.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said that a Hindu could not help doing what he was bid by his religion to do. If religious liberty was to be enjoyed by every one alike, there must be a certain degree of toleration among all sects. He thought that the freedom of worship ought to be respected.

The Hon'ble MR. BERNARD remarked that the late census had shown that in many districts of Bengal the majority of the population consisted of Mahomedans, and their convenience should be consulted. The hon'ble member in charge of the Bill had said that this clause was taken from the Howrah Act. But he might have added that it was a very much milder provision than that contained in the Howrah Act, for by this clause every body might beat drums and tom-toms unless the Commissioners at a meeting prohibited their so doing; but under the Howrah Act no body could do so without the permission of the Commissioners, which was a very different thing.

HIS HONOR THE PRESIDENT said he knew that there was no cause which had given rise to more serious riots and bloodshed than the blowing of horns and

beating of tom-toms in the neighbourhood of mosques. It was now ascertained that more than half the villages in Bengal were Mahomedan, and the clause merely prohibited the blowing of horns and such like when specially prohibited. It appeared to His Honor that there ought to be a power to prevent this becoming a nuisance to the people.

The motion was then negatived.

On the motion of Mr. Beaufort verbal amendments were made in sections 224 and 225.

Section 230 provided that the provisions of Part XI relating to Municipal markets should not apply to any municipality until they should have been expressly extended to it by the Lieutenant-Governor.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE observed that he thought Part XI should not apply to second or third class municipalities, and should only apply to first class municipalities when extended thereto by the Lieutenant-Governor; he would therefore move to insert after "apply" in line 1 of section 130 the words "second or third class municipality. And it shall not apply to any first class."

HIS HONOR THE PRESIDENT said that if this section was intended to apply to grand markets like that which was being constructed in Calcutta, he should be willing to agree to the amendment proposed; but as the object of the section was to enable municipalities to set aside pieces of land for the purposes of *haths* and the like, he thought it should be applicable to other municipalities as well as those of the first class.

The Hon'ble MR. BERNARD moved by way of amendment that the following words be inserted in lieu of the words proposed by the hon'ble member:—

"Third class municipality. And it shall not apply to any first or second."

The effect of this amendment would be to restrict the provisions of Part XI to first and second class municipalities, and exempt third class municipalities altogether from the operation of that Part.

The motion as amended was agreed to.

Section 231 empowered the Commissioners, with the sanction of the Lieutenant-Governor, to construct markets.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved the omission of this section, as he thought municipalities should not apply their funds to such speculations as the construction of markets and enter into competition with private enterprise, armed as they would be with such exceptional powers as the Bill proposed to give them.

HIS HONOR THE PRESIDENT said the arguments which he had used with regard to the former amendment on this point applied equally to this section, which would enable municipalities to set aside small places as markets. He thought that municipalities ought to be allowed to compete with private individuals in establishing public markets which should either not be taxed, or, if

taxed, be taxed for the benefit of no private individual, but of the community in general.

The motion was then negatived.

Part XII related to third class municipalities.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved the omission of this Part. He said that third class municipalities were generally composed of agricultural villages, and they ought to have for their administration a separate Act complete in itself and apart from the elaborate provisions relating to first and second class municipalities. He thought that Act VI of 1870, which related to what would under this Bill be called third class municipalities, had not had a sufficient trial given to it. If after sufficient trial it was found that any amendment was required in that Act, a Bill could be introduced for regulating third class municipalities. This Bill would impose upon these municipalities responsibilities to which they were not now subject, such as the provision of water for drinking purposes and the matter of conservancy; and there were certain references made to other parts of the Bill which made these provisions too cumbersome and complicated for the comprehension of agricultural populations. It was said that these provisions embraced the question of education, and if they were omitted from the Bill the people of agricultural villages would go without education altogether. To provide for this and the maintenance of chokidars, he would, if his motion were agreed to, move the introduction of the following section at the beginning of Part XIII:—

"The proceeds of the tax, together with any fines and other moneys realized under the Village Chokidaree Act, 1870, shall, in the first instance, be applicable to the payment of chokidars, and any surplus thereof to the supply of drinking water for the residents or for their cattle, and to the support of *patshalas* or village schools in such places where the said Act may be in force."

HIS HONOR THE PRESIDENT said he was quite willing to admit that it was a subject of fair consideration whether the supply of water for drinking purposes and conservancy should be included in the objects to which the funds of third class municipalities should be devoted. But it was decided by those in charge of the Bill that the provisions of Act VI of 1870 should be incorporated in this Bill, so that the whole municipal law of Bengal might be codified in one Bill. That duty had been performed with great care and labor by the Committee, who had incorporated in the Bill all the provisions of Act VI of 1870 which seemed appropriate, and His Honor should be extremely sorry that Part XII relating to third class municipalities should now be rejected. His sole wish was to work these provisions for the benefit of these village municipalities. They proposed a very small and moderate tax indeed, and a narrow limit was fixed to the sum that might be expended. He hoped it would be accepted by the Council. With regard to the question of complication, he might observe that great care had been taken to exclude third class municipalities from the operation of the greater part of the Bill; and when the Bill was passed we should be able to extract this chapter and the other parts of the Bill which related to third class municipalities, and print them separately as a small pamphlet for the use of punchayets.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said it was altogether a new burden to require third class municipalities to provide for conservancy; and when it was seen that all the provisions of Part X, except chapter I, would be applicable to these municipalities, and that the operation of other chapters of the Bill might be extended to them, hon'ble members could well understand what hardships might be entailed upon the agricultural population.

HIS HONOR THE PRESIDENT said the hon'ble member might propose to extend further the exemption from Part X. He should be ready favorably to consider that.

The motion was negatived.

Section 244 stood as follows:—

"The punchayet "shall" impose the tax described at section 138 clause (a) of this Act, provided that the tax for any one year shall not exceed twenty-five rupees for every hundred inhabitants."

On the motion of Mr. Beaufort "may" was substituted for "shall".

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved the addition to the section of the following words:—

"And provided that no one shall pay more than one rupee per mensem."

HIS HONOR THE PRESIDENT observed that the arguments which he had used against limiting the amount of tax on any one individual in first and second class municipalities, would apply with greater force to small municipalities. It would be very hard that a rich man should not pay more than a common bunia.

The amendment was put and negatived.

Section 256 provided that the surplus of the tax in third class municipalities, after paying for chokidars, might be applied to the supply of drinking water, to the support of *patshalas*, "and to conservancy purposes."

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved to omit the words "and to conservancy purposes."

The Hon'ble MR. BEAUFORT observed that, as had been pointed out by His Honor the President, it was entirely optional with the municipality to expend their money for these purposes; he did not see any reason for excluding "conservancy" from amongst the purposes to which the funds of third class municipalities might be applied.

The motion was put and negatived.

On the motion of Mr. Beaufort the following new section was introduced after section 256, to provide for the continuation of the services of the present chokidars after the extension of this Bill to any third class municipality:—

"Every person who, at the time of the extension of this Part to any place, is the chokidar thereof, or whose duty it is under any other designation to keep watch and ward therein, shall continue to perform such duty until the day fixed by the Magistrate as the date on which the first instalment of any tax imposed under the provisions of this Act shall become payable, and shall be remunerated for such services according to the usage which may prevail at that time in such place."

The motion was agreed to.

Section 258 provided for the retention in office of present chokidars, if in the opinion of the Magistrate they were competent to perform their duties.

The Hon'ble MR. BEAUFORT moved to add to the section the following words:—

"Provided also that if the number of such persons in any place is greater than the maximum number fixed by the last preceding section, the Magistrate of the district may select from the whole number and may relieve from the duty of watch and ward so many as are in excess of the fixed number, and the persons so relieved shall be deemed to have ceased to hold such office."

In the previous section, he said, it was laid down that the punchayet should appoint persons whom they deemed fit to be chokidars, and that the number of such chokidars should not exceed on the average one to every 300 inhabitants. It might occur that the number of chokidars found in a place to which the Act was extended would be in excess of the number laid down in section 257, and it was necessary to provide for the excess number. The latter portion of the words which he proposed to introduce had reference to a subsequent section for the disposal of chakaran land.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said that some of the questions dealt with in these amendments should have been before the members at an earlier date: the supplementary list of amendments had reached him only that morning while in Council, and he had hardly had time to consider these amendments.

HIS HONOR THE PRESIDENT said the object of the amendment now before the Council was only to prevent there being too many chokidars in any third class municipality. Under the provisions of the Bill the pay of every chokidar must be made up to at least three rupees a month: if the chakaran land was worth six rupees a year, the punchayet must supplement it so as to make up the chokidar's pay to three rupees a month: therefore it appeared to His Honor that you must limit the number of chokidars to be appointed.

The motion was then agreed to.

Section 261 laid down the mode of disposing of chakaran land when a chokidar holding such land was dismissed.

The Hon'ble MR. BEAUFORT said the section as it stood provided for the disposal of chakaran land either by leaving it in the hands of the chokidar who had ceased to hold office subject to the payment by him of half the annual letting value of the land, or by making it over to the zemindar subject to a similar payment by him to the punchayet. But the Committee had omitted to put in a third mode of disposing of the land, recourse to which might often be expedient, namely to make it over to the man to be appointed in the room of the dismissed chokidar. Mr. Beaufort would therefore move, in line 7, to omit the words "dispose of such chakaran land," and to susbstitute for them the words "place the chokidar who is appointed in the room of such person in possession of such chakaran land, or shall dispose of it."

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE wished to be informed what would be the consequence if the zemindar objected to the dismissal of the chokidar or to the nomination of his successor, for in most places the appointment and dismissal rested with the zemindar.

HIS HONOR THE PRESIDENT observed that the question now was whether a provision should be inserted to authorize the leaving of the chakaran land in the hands of the new chokidar instead of in the hands of the man who had been dismissed. The question as to who had the right of appointment and dismissal was quite a different thing, for which the section did not provide. HIS HONOR thought the section might be passed subject to the right of the hon'ble member to propose an amendment on that point in section 259, and to bring forward amendments in section 261.

The motion was then agreed to.

The Hon'ble MR. BEAUFORT said that in proceedings taken under section 261 there might be a question regarding the limits of the chakaran land, and the amount of the annual letting value of the land might be disputed. He would move the introduction of the following section after section 261:—

"The Magistrate of the district may cause a survey to be made of such chakaran land, and shall find, after inquiry made by himself, or by any Magistrate whom he may depute for such purpose, the amount from time to time of the annual letting value of such land. An appeal shall lie from such finding, if preferred within thirty days to the Commissioner of division, whose decision shall be final."

The object of the amendment, he said, was to empower the Magistrate to survey the land but not to decide on the title, and to find judicially the amount of the annual letting value, with an appeal as regards the latter to the Commissioner. This would save the parties, in cases of dispute, from the expense and trouble of resorting to the civil court.

The section was agreed to.

The Hon'ble MR. BEAUFORT moved the introduction of the following new section after section 262:—

"Whenever by the usage existing in any place before the extension thereto of this Act the chokidar or other person appointed to keep watch and ward therein is remunerated by contributions of money or grain realized by himself or other person from the inhabitants, or in any other way whatsoever, it shall be lawful for the punchayet, with the sanction of the Magistrate of the district, to maintain such usage or at any time to discontinue it.

"If it shall be determined to maintain such usage, the punchayet shall ascertain and record, subject to the supervision of the Magistrate of the district, the classes of the inhabitants by whom such remuneration is contributed, and the nature and amount or estimated value of the contribution for which each of such inhabitants is liable, and may from time to time recover any arrears of such contributions under the rules contained in this part for the recovery of arrears of tax, and shall be responsible for the punctual payment of such remuneration to the chokidar. In any such case a sum equivalent to the contribution recorded as payable by any such inhabitant shall be deducted from any assessment imposed on him under section 244.

"Provided that whenever such usage is maintained, the punchayet shall pay to such chokidar by equal monthly instalments the difference between the total amount or estimated value of the contributions and the fixed amount of the salary, if the amount or value of the contributions is less than the amount of the salary."

He observed that the object of this section was simply to provide that if in any village there was found to exist a system of paying the chokidar by general contributions, and if the punchayet desired to continue that system, it should be open to them to do so. The remainder of the section was simply to provide for the payment of the full amount of the chokidar's salary.

HIS HONOR THE PRESIDENT said this was an important provision which was introduced with the object of avoiding taxation as much as possible. The Council were aware that in many parts of the country village chokidars were paid sometimes by contributions in money and sometimes in kind. By this section we said "we don't wish to impose upon you our new fangled notions of taxation, but we will allow you to maintain that system which prescription has rendered acceptable to you."

The Hon'ble MR. SCHALCH moved by way of amendment the insertion of the words "or the value thereof" after the word "contributions" in the second paragraph of the section.

The section as amended was agreed to.

On the motion of the Hon'ble Mr. Beaufort the words "per annum" were inserted after "rupees" in line 16 of paragraph 2 of section 263.

Some verbal amendments were then made in the Schedules on the motion of Mr. Beaufort.

The Hon'ble MR. SCHALCH said the sections of which he had given notice were taken from the Chokidari Act of 1870. The provisions of the existing Act were with one exception verbally the same as those in the Part of the Bill before the Council. The exception was the exclusion of the clause relating to the appointment of a commission for the decision of questions relating to chakaran land. When that Act was passed the question was most carefully considered, and it was decided that it would be most injurious to have recourse to the vexatious process of the civil court, and it was therefore determined that a commission should be appointed for the determination of such questions. Consequently he had prepared an amendment to bodily incorporate in this Bill the sections of the present Act on the subject. He found subsequently that the wording of those sections was not suited to the wording of the new Bill. He had therefore prepared and brought forward the section in an amended form in such phraseology as with the approval of the hon'ble member in charge of the Bill was considered proper. There was one important alteration in the amendment now proposed: it was in the latter part of the section marked (*e*). By it a power of appeal was given from the decision of the Commissioners to the Judge of the district, whose decision should be final, and his proceedings would be in accordance with the rules of procedure for regular suits. Formerly the question was, whether the decision of the Commissioners should be final or open to appeal. It was then carried that the decision of the Commissioners should be final. With deference to the strong opinion which the minority had on that occasion expressed, he (Mr. Schalch) had altered his original opinion, because there was no doubt that questions of title might be involved in these investigations, and he thought that they should be open to the decision of a judicial officer. He therefore proposed that there should be an appeal to the Judge, whose decision should be final, and that such appeal should be permitted to be made not only by the zemindar, but by the Magistrate on

behalf of the punchayet. With these remarks he would move to insert, after section 262 the following section:—

"262 (*a*.) It shall be lawful for the Lieutenant-Governor, by an order to be published in the *Calcutta Gazette*, to appoint a commission, consisting of one or more persons, to ascertain and determine the chakaran and other service lands which may be found in any place to which this Act shall have been extended.

"(*b*.) Whenever in any place in which such commission shall have been appointed, any question shall rise whether any or what lands are chakaran or other service lands, it shall be lawful for such commission to inquire into such question.

"(*c*.) In inquiring into such question, the commission shall, as far as may be necessary for the purposes of this Act, exercise all such and the same powers as are conferred by Regulation VII of 1822 and the Regulations and Acts amending the same upon a Collector making a settlement of land revenue.

"(*d*.) Such commission shall demarcate the boundaries of any lands which they may determine to be chakaran or other service lands, and shall make orders setting forth such lands and the boundaries thereof, and the name of the village for the benefit of which such lands are assigned.

"(*e*.) The zemindar or other person interested, or the Magistrate of the district, may appeal from any such order to the court of the District Judge, whose decision thereon shall be final. Every appeal under this section shall be presented within the time and in the manner, and subject, as far as may be, to the rules provided by the Code of Civil Procedure for regular appeals in suits."

His Honor the President said that the Council would observe that the section proposed to be introduced was in all essentials, except in the matter of appeal, the same as that which found a place in the former Act VI of 1870. A material change had been made in the direction of giving an appeal to the Judge of the district from the decision of the Commissioners appointed under the Act. That was a concession which he believed several hon'ble members would think right, and would remove the objections which they otherwise might have had. Under these circumstances His Honor hoped the Council would accept the amendment now proposed.

The motion was agreed to.

His Honor the President said that it would be an instruction to the Secretary to adjust the numbering of the sections in the Bill, after which the Bill would be reprinted and further considered at the next meeting of the Council.

The Council was adjourned to Saturday, the 27th instant.

*Saturday, the 27th July* 1872.

## Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General.*
The Hon'ble F. L. Beaufort,
The Hon'ble V. H. Schalch,
The Hon'ble Lord Ulick Browne,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble B. D. Colvin,
The Hon'ble T. M. Robinson,
The Hon'ble F. F. Wyman,
and
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor.

## BENGAL MUNICIPALITIES BILL.

On the motion of Mr. Beaufort the Council proceeded to the further consideration of the Bill to amend and consolidate the law relating to municipalities.

The Hon'ble Rajah Joteendro Mohun Tagore said that, with the permission of the President, he would move an amendment in the definition of "movable property" contained in section 3. He thought that thatched houses and tiled huts should not be included in the definition of "movable property." Implements of agriculture had been excluded from seizure on account of arrears of tax, and it seemed but just that the thatched houses of poor ryots should also be excluded. The same consideration he thought should be shown as regards the houses under which the ryots were sheltered. He would therefore move the omission of the words "and thatched and tiled houses unless the walls are chiefly or wholly made of bricks or stones," and the substitution for them of the words "and does not include thatched houses and tiled huts."

His Honor the President said that this was an amendment of which notice had not been given, but in regard to which the Government were in accord with the hon'ble member who moved it. Hon'ble members who looked at the definition would find that in the definition of "movable property" were standing timber, growing crops and grass, fruit upon and juice in trees, and that it included thatched and tiled houses unless the walls are chiefly or wholly made of bricks or stones. The amendment proposed was to omit thatched and tiled houses from the list of things included under the definition of movable property. In common parlance a house was not generally considered movable property, and it was somewhat straining the use of the term to include houses in that

term. His Honor quite agreed with the hon'ble member in thinking that it would be attended with considerable hardship if we sold a man's house from over his head: if a man was so poor that you could not realize a tax from the sale of any other property, such a person did not seem to be a fit person to be subjected to municipal taxation.

The motion was agreed to.

The Hon'ble Mr. Beaufort said, the first of the amendments, of which he had with the permission of the President given notice, related to the provisions of the Bill for the recovery of taxes. Under the system at present in force, at the beginning of each quarter of the year a bill was presented to each person assessed by the tax-collector, which bill contained a statement of the amount due for that quarter. If the bill was not paid within ten days from its presentation, the tax-collector served upon the defaulter a notice of demand, and if he did not pay the tax within seven days after the service of such notice, process of distress and sale was issued. Under the provisions of this Bill the bill and notice of demand would be presented together; but one month would be given to all assessed persons in which to pay the tax. If they did not pay the tax within one month of its becoming due, the Commissioners would issue a bill and notice of demand together, which would be served on the assessee, and if he did not pay the tax within ten days after the service upon him of such bill and notice, process of distress and sale would issue.

By section 118 it was provided that the Commissioners should keep their office open at certain hours every day for the purpose of receiving money in payment of taxes, and giving receipts for the same. The words in the latter part of that section were—

"During such hours every person is required to pay the whole or any part of any sum due by him, and the Commissioners or an officer appointed in that behalf shall be bound to give a receipt at the time that the money is paid."

In the construction of these words, and also of certain words in some of the forms in the Schedules which Mr. Beaufort also proposed to amend, the object of which was simply that those who desired to do so might pay their money into the office, it had been supposed that the intention of the Bill was to abolish the system of collection by tax-collectors, and that every person would be required to go to the Commissioners' office every quarter and pay the money due. If that were the case, it would no doubt entail a very great amount of hardship and loss on most of the persons assessed: a poor man might lose a whole day in going to, and returning from, the Commissioners' office. It was the intention of the Committee when they framed that section to provide merely that any person might, if he so desired, pay his money into the office of the Commissioners without the trouble of receiving notices of demand. As it appeared that the object had been misunderstood, he proposed the amendment in section 118 which stood on the paper with the object of explaining more fully to all municipalities that they were perfectly at liberty to employ tax-collectors. Section 31 gave municipalities full power to appoint as many tax-collectors as

they thought necessary; and that taken in conjunction with section 118, appeared to him to make it quite clear that the Commissioners were bound to send out tax-collectors to collect the taxes during the first month which was given to all assessees to pay their money. The Bill provided that as soon as the assessment lists were prepared, an extract containing the particulars and amount of the assessment on each individual should be served upon him, and therefore each person would know perfectly well what he had to pay for the quarter, and it was unnecessary for the collector to carry with him a bill stating the amount of the liability. Instead of the words which he had read from section 118, he would propose to substitute the following:—

"Every person is required to pay the sum due by him during the first month of each quarter; such payment may be made at the office of the Commissioners or to any tax-collector duly appointed in that behalf. The amount due by any person on account of the tax on persons or the tax on holdings shall be deemed to be the amount entered in the notice of assessment served upon him under section 40 or section 53, or in any subsequent order revising the same."

If His Honor the President would permit him, Mr. Beaufort would proceed to explain the other amendments with a similar object, which had been placed upon the motion paper. One of these was to add to section 121 the words "and shall be served by a person authorized to receive payment." Section 121 was the section which provided for the service of the bill and notice of demand, and he proposed to add to it the words "and shall be served by a person authorized to receive payment," in order that the Commissioners might see that they were bound to send out for the collection of the tax a person competent and authorized to receive payment of the tax.

Then in Schedule C, which contained the form of assessment list in respect of the tax on holdings, an extract of which was to be served on each assessee as he had mentioned, it was stated that the quarterly instalments were to be paid at the office appointed by the Commissioners, and Mr. Beaufort proposed to add the words "or to the tax-collector or other officer authorized to receive payment." Similarly in Schedule B, which contained the form of assessment list in respect of the tax upon persons, an extract of which was to be served on the assessee, Mr. Beaufort proposed to insert the same words. And in the first Form of Schedule F, after the word "notice" in line 5, he proposed to insert the words "to an officer authorized to receive payment or."

The motions were severally agreed to.

The Hon'ble MR. BERNARD said he would ask the leave of the President to move an amendment of which no notice had been given. The amendment which he wished to propose was with reference to a matter which had been more or less considered. Section 170 was the first section of Part X of the Bill which contained all the municipal regulations provided in the Bill, none of which were to be in force in any municipality unless specially extended thereto by the Lieutenant-Governor. As the Bill stood, the first chapter of this section did not apply to third class municipalities, but any other chapter of this Part, with certain exceptions, could be applied to such municipalities. At the last meeting of the Council the hon'ble member

opposite (Rajah Joteendro Mohun Tagore) had proposed that no portion of this Part should operate in third class municipalities, and after some discussion the Council agreed that the first chapter of this Part should be excluded. Mr. Bernard would now ask the Council to consider again whether the whole of the provisions of Part X should not be excluded from these small municipalities. Third class municipalities would consist entirely of rural villages; they might be large or small. At any rate, such municipalities would consist of places in which the great bulk of the people would be agricultural. In such places it might not be necessary at present, or for some years to come, to introduce provisions such as were contained in chapter 4 of Part X, or in chapter 5, or indeed in any chapter of Part X, except perhaps in chapter 6, regarding vaccination and inoculation. As the Bill was first drawn, it was intended that the provisions of this Part should not extend to third class municipalities. Something might be said in favor of introducing these provisions regarding vaccination and inoculation in these small villages; but if it should become necessary to do so, perhaps it would be better to make it the subject of a subsequent Act, and not include it in this Bill.

With these remarks Mr. Bernard moved to prefix to section 170 the words "This Part shall not apply to any third class municipality," and also to omit the third clause of the section, which was inserted at the last meeting on the motion of the hon'ble member to whom he had referred. The effect of these amendments would be that none of the municipal regulations of Part X could be applied to third class municipalities.

The Hon'ble MR. BEAUFORT said he believed that, at the last meeting of the Council the hon'ble member on the right (Rajah Joteendro Mohun Tagore) did not propose to exclude the operation of the whole of Part X from third class municipalities, but only the provisions of the first chapter of it.

HIS HONOR THE PRESIDENT said his impression was the same as that of the hon'ble member who had just spoken, that the motion at the last meeting was not to exclude the whole of Part X from operation in third class municipalities, but only the provisions of chapter 1. At first he had certainly supposed the proposal to be to exempt third class municipalities from the whole of Part X, and he was prepared to accept that proposal; but it turned out that the hon'ble member (Rajah Joteendro Mohun Tagore) had limited his motion to chapter 1. In coming to look over the provisions of Part X he thought that the Select Committee must have allowed third class municipalities to remain subject to the operation of that Part by an oversight; for throughout that Part the word "Commissioners" was used, that term being applicable only to first and second class municipalities, and it would be impossible to apply the provisions of this Part to third class municipalities without material alterations in the wording of the sections.

Under these circumstances HIS HONOR thought he was justified in permitting this motion to be made, which probably the Council would be prepared to accept.

The motion was agreed to.

The Hon'ble MR. BEAUFORT said the amendment in the first line of section 258 of which he had given notice was merely verbal, viz. to omit the words "such person" and substitute for them the words "the chokidar or other person whose duty it is to keep watch and ward in any place." Some of the sections regarding chokidars in third class municipalities were inserted in the Bill at different times, and there might be some difficulty in following the wording of those sections. In order to make them clear he proposed the amendment which he had read.

The motion was agreed to.

Similar amendments were made on the motion of Mr. Beaufort in sections 259 and 260.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE said, with reference to the amendments in sections 258 and 260 of which he had given notice, he might state that the amendments seemed so nearly connected with each other, and seemed to depend so much upon the same principle, that he would, with the permission of the President, state his reasons for both the amendments together. It was well known that chakaran lands were originally assigned by the zemindars for the support of village chokidars, and that at the time of the permanent settlement those lands were included within the estates on a consolidated jumma. Regulation XXII of 1793, while relieving zemindars of police responsibility, rendered these watchmen to a certain extent subsidiary to the regular police force. But the Sudder Nizamut Adawlut, the highest appellate court in the province, in a decision dated 12th July 1854, held that the appointment of watchmen was voluntary, and that it could be enforced by no legal penalty. The zemindars nevertheless practically accepted the obligation of maintaining chokidars. But the right to nominate, the right to appoint and dismiss village chokidars, had always rested in the zemindars, and had been recognized by the Government itself. He would read to the Council a portion of a letter dated 13th November 1862, which was addressed to the Secretary to the Board of Revenue by the Hon'ble Mr. Eden, then Secretary to the Government of Bengal. In that letter Mr. Eden said—

"The Lieutenant-Governor observes that, according to the terms of the tenure, the zemindar is responsible to Government for the service of the paiks, and is bound to appoint them and to see that they are efficient. On a vacancy by death, desertion, or otherwise, he is bound to appoint a successor, giving preference to heirs if they are qualified for the duty, but not otherwise, and he may dismiss a paik for incompetence or misconduct and make over his jagheer to another. The paiks, on their part, are responsible to the zemindar, but the zemindar is responsible to Government for keeping them up in an efficient state."

Now, as Rajah Joteendro Mohun Tagore had already stated, these chokidari lands had all along been included as a part of the estate to which they belonged, and the old Regulation XXII of 1793 to a certain extent made the chokidars subject to the regular police. The question as to the right of nomination of the chokidar had never been questioned. He would again draw the

attention of the Council to another portion of the same letter, in which Mr. Eden said :—

"The right to resume and assess lands of this description when the service in consideration of which they are held is no longer performed or required has not been questioned. But the right is that of the zemindar, not of the Government. The Government has the right to insist on the continued performance of the service, and so long as it does so insist, the zemindar must maintain the paiks and cannot assess their lands. What the Lieutenant-Governor now wishes is that an endeavour should be made to commute the service for a money payment by the zemindars, and it appears to His Honor to be probable that this may be successfully accomplished if the Collector takes the matter in hand himself and endeavours to settle it by personal communication with the zemindars rather than by official correspondence."

Rajah Joteendro Mohun Tagore held in his hand an original letter from the Collector of a district, which seemed to be based on the principle of the letter extracts from which had already been read out. The Collector said :—

"It is the intention of His Honor the Lieutenant-Governor of Bengal to dispense with the services of the paiks you are now bound to retain, provided you are prepared to give annually for this purpose a certain amount ; for if Government ceases to require the services of the paiks, you will be able to resume their jagheers.

"The Lieutenant-Governor would be satisfied with a moderate annual money payment in lieu of this service. But if you do not agree to this annual money payment, it will then become necessary to insist rigorously on the appointment of efficient paiks, and to take measures for organizing them in the best manner practicable in connexion with the new police."

The government of Sir William Grey also accepted this view of the question, and Act VI of 1870 was introduced in, and passed by, this Council, by which the principle of commuting the services of chokidars into money payments by the zemindars was also laid down. Now, if in any places the services of a chokidar were no longer required, it was but bare justice to the zemindars that the land should revert to them under any arrangement which the Government might sanction. But certainly it should not be made over to the chokidar, as proposed by the alternative provision of section 260; for in that case it would be interfering not only with the right of the zemindar to appoint and dismiss the chokidar, but to resume the land when the services of the chokidar, were no longer required or performed,—a principle which had been distinctly recognized by the Government. That being the case, Rajah Joteendro Mohun Tagore thought it would be very unjust towards the zemindar to take away his rights and make an alternative provision by which the Magistrate could make a settlement with the chokidar, ignoring the zemindar altogether. That alternative provision, he submitted, would simply re-open a question which had been fairly set at rest by the previous Government. Rajah Joteendro Mohun Tagore would therefore first move to add the following words to section 258 :—

"Provided that in no case shall the punchayet appoint where the right to appoint and dismiss the chokidar has by any law or custom vested in the zemindar, but that in such case the zemindar shall appoint a proper person in the room of the person declared incompetent by the Magistrate."

His Honor the President said that the views expressed by the hon'ble member seemed to open up the whole question of chakaran land. His Honor

did not think that the two amendments of the hon'ble member hung together, as one of them referred to the case of the land being made over to a new chokidar and raised the question of the right of nomination to the office, and the other referred to the case in which no chokidar was to be appointed, and the disposal of the land came into question in consequence of no such appointment being made. Those two were somewhat different questions and had better be separated.

Now as regards the first amendment, which the hon'ble member had read to the Council, the Government were not disposed to controvert the essential part of the hon'ble member's argument; but he must beg wholly to controvert, and wholly to deny, the proposition, which the hon'ble member commenced by affirming as being very well known. He said that it was very well known that the chakaran lands were originally assigned by the zemindar for the support of the chokidar. That statement, His Honor believed, was a pure fiction,—a pure invention of modern times. His Honor said that these chokidars were generally of very much more ancient origin than the zemindars themselves. It would be found that in parts of the country where they prevailed, so far from being servants appointed by the zemindars, they had been in existence for thousands of years, being descendants of the original inhabitants, the aborigines of the country. The watchmen generally came of the earliest and most aboriginal tribes, and were one of the most ancient institutions in the whole of India. We knew that the zemindars were of comparatively modern origin. That did not very materially affect the question; but His Honor did, as a matter of history, altogether deny the premise that such lands were assigned by the zemindar. He did not believe that they were assigned by the zemindar at all. The zemindars found these lands assigned for the maintenance of village chokidars, and the principal action of the zemindars was not to assign any land, but to resume as much of those lands as they could. At the same time he quite admitted that in cases where the chokidar was supported by the chakaran land the nomination of the particular individual was either by custom or prescription generally vested in the zemindar. He was quite willing to admit that it would be unjust to take away that right where it existed; where the chokidar was maintained from the proceeds of the chakaran land assigned to him, it would be unjust to take from the zemindar his right of nomination. Consequently the hon'ble member in charge of the Bill had proposed an alternative amendment which would just meet the case. The objection to the amendment of the hon'ble member on the right (Rajah Jotcendro Mohun Tagore) was that it was too sweeping. It proposed that in every case in which a chokidar was dismissed, where the right to appoint and dismiss had by law or custom been invested in the zemindar, he should still retain that right. Suppose the quantity of chakaran land was trifling; suppose it only yielded three rupees a year, and that the village community were bound to make up the income of the chokidar to thirty-six rupees a year; would it be fair and reasonable that the zemindar, who had heretofore nominated a chokidar on three rupees a year, should have the privilege of nominating a chokidar on thirty-six rupees a year? The view of the Government was that the matter must be compromised, and the proposal

of the hon'ble member in charge of the Bill was that we should compromise it in this way. The villagers would have a right to say to the zemindar—"Partly you contribute, partly we contribute, to the support of the chokidar; we cannot both have the right to nominate, and the party who contributes the major portion of the funds for the maintenance of the chokidar should nominate and appoint him." Therefore the proposal of the hon'ble member in charge of the Bill was that in the case in which the chakaran land still remained the source of subsistence of the chokidar, and when the major part of the maintenance of the chokidar was derived from that source, then the zemindar should exercise the full right of nomination although the village community provided a portion of such maintenance; but if the village community paid the greater portion of the money for the subsistence of the chokidar, they should exercise the right of nomination. That being so, His Honor should prefer the amendment of the hon'ble member in charge of the Bill, not as denying in the main the justice of the proposition of the hon'ble member on the right (Rajah Joteendro Mohun Tagore), but in order that the hon'ble member in charge of the Bill might have the opportunity of substituting what the Government considered a fairer and more just manner of settling the question.

The Hon'ble Mr. Beaufort said it appeared to him that it would be scarcely necessary to add anything to what had fallen from His Honor the President; but he might say that in Committee he had proposed a clause which specially reserved to the landlord the right of nomination. But as he had then understood, the hon'ble mover of the amendment and the hon'ble member who was now absent both thought it unnecessary to retain the section, and with their consent, if not by their desire, it was omitted altogether. The right of nomination vested in the landlord rested entirely on the fact of his providing the land for the support of the chokidar: if the zemindar did not provide the land which was to maintain the chokidar, he could have no possible right to nominate the chokidar; and if he provided land which yielded only a small portion of the chokidar's wages, he could not claim the right to nominate in the same manner as if he had provided the whole of the chokidar's maintenance. The chakaran lands to which the Bill referred were those which were alluded to in section 41 of Regulation VIII of 1793, which were lands assigned for the support of village chokidars as distinguished from the police of the country. These lands were distinct from those mentioned in clause 4, section 8, Regulation I of 1793, for the support of the general police of the country. Under the provisions of the decennial settlement the zemindar was bound to keep up an efficient village police, and in consideration of that obligation on the landlord the chakaran land assigned for the maintenance of the chokidar was considered an integral part of the estate, but it was not included in the assessment of the estate, and therefore the zemindar paid no revenue at all for it. If therefore the land did not support the village police, and the zemindar resumed this land, as the hon'ble member desired, he would get more than was intended to be given to him by the

permanent settlement. He would conclude by moving that in lieu of the words proposed by the hon'ble member, the following words be added to section 258:—

"Provided that in any such case if the Magistrate of the district determines, under the provisions of the first paragraph of section 260, that the chokidar who may be appointed shall be placed in possession of the chakaran land held by his predecessor, and if the annual letting value of such land is more than one-half of the fixed salary of such chokidar, the appointment of such chokidar shall be made by any zemindar or other landholder in whom the right to appoint has been vested by any law or custom."

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE observed, with reference to the compromise that had been proposed by the hon'ble member in charge of the Bill, that the Bill as originally framed was very different, with regard to the chakaran provisions, from what it now was. Then there was no alternative provision for making over the chakaran land to the chokidar, but the land was to have been made over to the zemindar in conformity with the principle laid down by the former Government. If the amendment now before the Council were accepted, it would altogether do away with the right of the zemindar to appoint and dismiss the chokidar; because there would hardly be any place in which the proceeds of the chakaran land would amount to more than one-half of the chokidar's wages, so that virtually the zemindar would be deprived of the right which he had hitherto enjoyed. Moreover, the right to the services of the chokidar, which was proposed to be reserved to the zemindar by the alternative provision to which he (Rajah Joteendro Mohun Tagore) had referred, would also be nominal, inasmuch as no servant could be expected to obey his master when he knew that that master had no right to dismiss him, nor to appoint another man in his place. He was free to admit that where the municipality would have to pay the greater portion of the chokidar's salary, his appointment and dismissal ought not justly to rest with the zemindar; but this, he submitted, showed the practical difficulty of the alternative provision of making over the land to the chokidar, for in doing justice to the municipality the Legislature should also see that no injustice was done to the zemindar. The *modus operandi* prescribed in Act VI of 1870, which had been embodied in this Bill, if left alone, would not give rise to any such difficulty.

The Hon'ble Rajah Joteendro Mohun Tagore's amendment was negatived, and the Hon'ble Mr. Beaufort's amendment was carried.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved in section 260, line 9, paragraph 1, to substitute the words "in the following ways" for the words "in either of the following ways;" and also to omit the second paragraph of the section.

HIS HONOR THE PRESIDENT said he had been very averse to do away with the responsibility of the zemindar in police matters. No doubt the object of creating zemindars was that they should be responsible for the village police and other such duties. It might be said that under the arrangement proposed by this Bill the reason for the existence of zemindars fell to the ground; but the Council must accept facts as they were. Zemindars had been established, and we knew that we could not look to them for the performance of police duties. We knew

that it was impossible to say who was the owner of the land; we knew that there were landholders below the zemindar, owners of land of different classes, putneedars, durputneedars, and the like, holding separate property in the land, actual, contingent, and remainder. We knew that the splitting up of property laterally had also taken place to an enormous extent. Not only were there several gradations of landholders, but in each grade and right there were many sharers: consequently it was wholly impossible to enforce the maintenance of an efficient police on the responsibility of the zemindars. The government of His Honor's predecessor had thought it expedient to introduce a system, which was the foundation of the provisions of this Bill in regard to certain classes of municipalities, to have properly appointed representatives of the interests of each village responsible in this matter of police in substitution for the zemindar. Now, the amendment before the Council referred to cases in which the new system had been introduced, and we should have the chakaran lands which were no longer wanted thrown upon our hands, and the question was how to dispose of them. His Honor thought that the proposal of the hon'ble member (Rajah Joteendro Mohun Tagore) was unjust; he proposed simply to ask the Council to do for the zemindar the work of resumption; he asked the Council to interfere and say—"These lands, whatever their history and rights, shall be resumed and handed over to the zemindar upon certain conditions." That seemed to His Honor to be most unjust. The Council had introduced a definition of chakaran land with which this Bill dealt, and they would find that that definition was not confined to the chakaran lands to which the provisions of Act VI of 1870 were very jealously restricted, but included chakaran land held for village services of watch and ward of all kinds and of whatever description. If hon'ble members would refer to Act VI of 1870, they would find by the definition that the privileges there accorded to the zemindar were very strictly limited to the case of land which did actually render service to the zemindar. The words there used were—

"'Chokidari chakaran lands' shall mean lands which may have been assigned otherwise than under a temporary settlement for the maintenance of the officer who may have been bound to keep watch in any village and report crime to the police, and in respect to which such officer may be at the time of the passing of this Act liable to render service to a zemindar."

There the words used were "may be at the time of the passing of this Act liable to render service to the zemindar." That definition was very strictly limited to the holder of land who was bound to render service. The previous Act did not deal with any other land. The definition contained in this Bill was much wider in scope; it included those lands as well as lands the holders of which owed no service to the zemindar.

With respect to the letters, extracts from which were quoted by the hon'ble member, His Honor was not prepared to go into the history of the opinions there given; it seemed to him that they did not apply to the cases under discussion. These paiks were a totally different kind of men, who held lands which were entirely exempted from the operation of this Bill. The paiks were a kind of militia. The proposition to which those letters referred was, His

HONOR believed, a scheme of Sir Cecil Beadon to resume those militia lands for the benefit of the regular police service. HIS HONOR did not think paiks were chokidars in any sense.

The Hon'ble THE ACTING ADVOCATE-GENERAL said he thought the views of the hon'ble member on his right (Rajah Joteendro Mohun Tagore) were borne out by the case of Joykissen Mookerjee *vs.* the Collector of Burdwan; the chokidars kept watch for the Government and did special service for the zemindar.

But be that as it might, it seemed that the provision in the Bill as it now stood was just and every way met the rights of both parties absolutely and entirely. There might be cases in which the chokidar was really of much older standing than the zemindar, and held with his land rights which had come down to him through thousands of years burdened with certain conditions; and there might on the other hand be cases in which the land had been assigned by the zemindar for the maintenance of the chokidar. In both those cases we said that the chakaran land when not resumed might remain in the hands of the ancient holder with this proviso, "subject to any duties in addition to those of watch and ward which he is bound to perform for, or under the order of, the zemindar or other person entitled to demand them, or subject to such other settlement as may be lawfully made between them." We said to the zemindar—"we leave you in the position in which you were; whatever rights you are entitled to you will retain; whatever settlement you may have made you may still demand; if you are entitled to resume, you may do so. But we won't resume for you; we will leave you in the position in which we found you." That, the Advocate-General thought, was a reasonable proposition which the hon'ble member in charge of the Bill made.

The Hon'ble MR. SCHALCH said, under the definition of "chakaran land" as it now stood, it was proposed to incorporate in this Bill chokidars who fell under various designations as holding chakaran land, because they held them for the service of watch and ward, and that not beyond the limits of the village in which the land was situate. The lands therefore coming under the term of chakaran lands would be not only the zemindaree chakaran lands, but those also given for village purposes, and to the latter the zemindar had no claim whatever. If the amendment of the hon'ble member (Rajah Joteendro Mohun Tagore) were introduced, then if the Government thought it necessary to remove any such chokidar and make other arrangements for the performance of his duties, the land of the latter description must be made over to the zemindar, who possessed no right to any portion of it. The provision in the Bill, however, would have the effect of separating the duties of police from those also attaching to the zemindar for the chakaran land and relieving the zemindar from all responsibility for the performance of those duties; it would allow the chokidar to hold the land at half the jumma, and the remaining half jumma would remain for the performance of the zemindaree duties. If the zemindar had any existing power to remove the chokidar, when retained in possession of the zemindar's chakaran lands, for not performing his duties towards the zemindar,

or to resume the land if the chokidar did not perform those duties, that power would still remain to him. That seemed a fair settlement of the Bill and would not have the objection which the amendment of the hon'ble member opposite (Rajah Joteendro Mohun Tagore) would have of forcing the Government to make over to the zemindar land to which he had no right.

The motion was then negatived.

The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE moved the omission of the words "one-half of" in line 6 of paragraph 3. He said in many cases the zemindar was entitled to services from the chokidar, in addition to the payment of a nominal quit-rent; the money value therefore of the chokidar's services, both to the zemindar and the villagers, was represented by the letting value of the land which the chokidar occupied minus the full amount of quit-rent. If the zemindar in any case was to be called upon to commute the services of the chokidar of the village by a money payment, he thought the whole amount of the quit-rent should be deducted, and then the remainder should be divided into two halves.

After some conversation the motion was negatived.

On the motion of Mr. Beaufort the Bill was then passed.

## EDUCATIONAL AND CHARITABLE ENDOWMENTS.

The Hon'ble Mr. BERNARD said that at the last meeting of the Council he presented the report of the Select Committee, with the Amended Bill, to provide for the due appropriation of certain educational and charitable endowments. He now moved that the report be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee; since the report was presented a letter had been received from the Honorary Secretary to the British Indian Association. The original Bill had been published many months ago, and that was the only communication which had been received on the subject of the Bill. The letter, copies of which were in the hands of hon'ble members, made several suggestions, most of which had been anticipated by the Committee; but there was one point upon which the Select Committee had not made an amendment. The letter at paragraph 5 pointed out that the words used in the Bill were "not exclusively religious;" that was to say, that the only endowments excluded by the Bill from its operation were those which were exclusively religious; and the letter went on to say that endowments partly religious ought also to be excluded. This point had been discussed in Committee, and it was considered that there were endowments partly religious in which the religious and charitable elements were more or less blended together; and again, that there were some endowments which were partly religious and partly educational, from which if the religious principle were altogether excluded the object of the endowment would fall to the ground. Act XX of 1863 provided for religious endowments; an old regulation of 1819 provided for the management of landed endowments which might be

given either for religious or secular purposes; and this Bill provided for money endowments given for non-religious purposes.

The motion was agreed to.

Section 1 was as follows:—

"All moneys or lands heretofore granted, or which may be hereafter granted by any person or persons for any charitable or educational purposes, not being purely religious, within any district within the territories subject to the Lieutenant-Governor of Bengal, for which no person or persons have been nominated trustees or trustee, or for which there may not be any living trustee, or any power of appointing a trustee under the instrument of endowment, are hereby vested in such trustees as the said Lieutenant-Governor shall, as soon as possible after the passing of this Act, nominate, as hereinafter provided."

On the motion of the Hon'ble Mr. Bernard the following amendments were made in section 1:—

In line 8 the words "trustee or trustees" were substituted for the words "trustees or trustee;"

In line 11 the words "shall vest" were substituted for the words "are hereby vested;"

And in lines 13 and 14 the words "as soon as possible after the passing of this Act" were omitted.

The Hon'ble MR. BEAUFORT moved the omission of the word "purely" before the word "religious" in line 5. He observed that Act XX of 1863 referred to mosques, temples, and other religious endowments, and section 21 of that Act provided for the case of endowments which were partly religious and partly secular. It appeared to him that the use in this Bill of the word "purely" might place some of the endowments which came under its provisions in the same category as those to which Act XX of 1863 referred as partly religious and partly secular. This Council had no power to interfere with anything in the Act of 1863, and therefore he thought the simplest way would be to omit the word "purely."

The Hon'ble the ACTING ADVOCATE-GENERAL said he thought the object of the section was very clearly expressed, and that the hon'ble member had mistaken its meaning. The word "purely" was used to mark the special character of the particular endowments to which the section applied. It appeared to him that some words that gave the idea of exclusiveness should be used. In the cases to which the hon'ble member referred, it was obvious that the Board of Revenue would, under the provisions of the Act of 1863, separate that portion of the endowment which related to religion. This section would not interfere with the action of the Board in that respect. In the preamble of the Bill the words used were "in respect of which either no person had been originally nominated a trustee, or there is now no trustee living or capable of being appointed under the instrument of endowment." It seemed to him that in respect of endowments under the Board of Revenue it could not be said that there was no trustee living.

The Hon'ble MR. BEAUFORT said that the remarks which had fallen from the learned Advocate-General made it necessary for him to go more fully into the matter. Regulation XIX of 1810 did not vest all endowments in the Board of Revenue, but enabled the Board by special rules to appoint trustees in whom they should be vested: it referred to all lands belonging to endowments, and it provided that the Board should have the superintendence and management of all such endowments, and should see that the funds of those endowments were devoted to the purposes to which the donors intended to apply them. The Regulation went even further than that, and in section 13 referred to the cases "in which the nomination has usually rested with the present or former Government or a public officer, or of right appertains to Government in consequence of no private person being competent and entitled to make sufficient provision for the succession to the trust and management"; so that the section referred to the particular case to which this Bill referred, that was to say, an endowment for which there was no trustee living, and for whose appointment no power existed. It was assumed that the Government in such a case should have the power to appoint trustees, and this Bill proposed to enact rules under which the Government should exercise that power to appoint trustees. The section in Act XX of 1863, to which Mr. Beaufort had referred, and to which the learned Advocate-General alluded, referred obviously to the provisions of Regulation XIX of 1810; that was to say, in a case of this kind, in which the endowment was partly religious and partly secular, the Board of Revenue, having been vested under the rule of Regulation XIX with the management and superintendence of the endowment, should separate the two elements. As far as the object of the endowment was religious, it was to separate the fund devoted to that purpose, and make it over to the religious trustees, the object being to divest the Government of all interference in any way with religious endowments; and as regards that portion of the endowment which was secular, the Act made provision that the Board should provide trustees for its management. If the Board under that rule proceeded to deal with a trust which was partly secular and partly religious, and if this Bill also proposed to deal with endowments which were partly secular and partly religious, it appeared quite clear that the one would clash with the other.

The Hon'ble the ACTING ADVOCATE-GENERAL said he thought that Regulation XIX of 1810 was by its terms restricted to endowments granted prior to the passing of that Regulation. The words in the preamble were:

"Whereas considerable endowments have been granted in land by the preceding Governments of this country and by individuals for the support of mosques, Hindu temples, colleges, and for other pious or beneficial purposes."

And the second section of the Regulation declared that the general superintendence was vested in the Board of Revenue. This Bill was intended to apply only to endowments of a charitable or educational character, not to endowments which were devoted to religious purposes only, in respect of which there was no trustee living or capable of being appointed. What he submitted

was that Regulation XIX of 1810 had exclusive reference to endowments granted at or previous to the passing of that law. By the second section of that Regulation the management and superintendence of all endowments of any character were vested in the Board of Revenue, who had power to appoint trustees, and therefore such endowments did not fall within the provisions of this Bill, which applied to those cases in which there was no trustee living or capable of being appointed. It appeared to the Advocate-General therefore that this Bill neither clashed with Act XX of 1863 nor with Regulation XIX of 1810.

The motion was then negatived.

The Hon'ble MR. BEAUFORT moved that in lines 7 and 8 of the section the words "for which no person or persons have been nominated trustee or trustees" be omitted, and the words "for which no instrument of endowment has been executed" substituted for them. He thought that the Bill should provide for the case in which no instrument of endowment was to be found at all.

After some conversation the motion was agreed to.

The Hon'ble MR. BERNARD said he had put down upon the paper a motion to add the following section to the Bill:—

"Nothing contained in this Act shall be deemed to apply to any endowment at present superintended by the Board of Revenue under the provisions of Regulation XIX of 1810."

The object was to meet the possibility of any objection that the Bill would in any way clash with the provisions of Regulation XIX of 1810. The learned Advocate-General had, he thought, made it clear that the Bill did not in any way clash with the Regulation which vested the superintendence of certain landed endowments in the Board of Revenue. Therefore, under that interpretation of the Regulation law and of this Bill, he proposed not to ask the Council to pass this section, and he would, with the permission of His Honor the President, withdraw the amendment of which he had given notice.

The Hon'ble MR. BEAUFORT said he was sorry to say that the opinion given by the learned Advocate-General had not convinced him. Regulation XIX of 1810 did not apply only to endowments granted prior to its enactment. The words of the law did not justify such a construction, and it had never been advanced in any case in court which had come under his cognizance. It had always been considered, he believed, that every endowment would come under the superintendence of the Board of Revenue under the provisions of that Regulation, and Mr. Beaufort still contended that there would be a clashing between this Bill and Regulation XIX of 1810, unless it were provided that from the date upon which trustees should be appointed under this Bill, the provisions of Regulation XIX of 1810 would cease to be applicable to any endowment of the nature specified. The section proposed by the hon'ble member in charge of the Bill went too far. Sections 4 and 5 of the Bill had a wider application than the other sections. When the hon'ble member proposed to say that nothing contained in this Bill should affect any endowment,

now under the superintendence of the Board under the provisions of Regulation XIX of 1810, he practically relinquished the intention of the Bill that it should apply to *any* endowment in respect of which no trustee was living or was capable of being appointed. And the question of the applicability of the Bill to an endowment would depend on the accident of the Board's superintendence. Mr. Beaufort would substitute, in lieu of the section prepared by the hon'ble member in charge of the Bill, a section providing that the provisions of Regulation XIX of 1810 should cease to apply to any endowment from the date on which trustees appointed under this Act took charge of it.

The Hon'ble MR. BERNARD said he thought that the section proposed by the hon'ble member, if adopted, would operate to prevent estates being brought under the superintendence of the Board of Revenue: and he did not think that it could be said that the Board had failed in its duty in respect to endowments under its charge. The reason that was assigned for the amendment was that the Bill should not affect the provisions of Regulation XIX of 1810. On the ground he had just stated, he would, after hearing the opinion of the Advocate-General, not propose to press the amendment of which he had given notice, and he ventured to think that the amendment proposed by the hon'ble member opposite (Mr. Beaufort) was not required.

The Hon'ble MR. SCHALCH said he must say that the general impression as to the operation of Regulation XIX of 1810 had not acquiesced with the interpretation of the learned Advocate-General. The ordinary impression had been that that Regulation referred not only to all endowments created and existing prior to the enactment of that Regulation, but it had been brought to bear in the case of some endowments which were not then in existence. He would not venture to argue with his hon'ble and learned friend on a legal point, but would point attention to the words in section 2 of the Regulation—"The general superintendence of all lands granted for the support of mosques, &c., is hereby vested;" and again in section 3 the words used were—"It shall be the duty of the Board of Revenue to take care that all endowments made for the maintenance of establishments of the above description be duly appropriated."

He thought that those words might properly bear a larger interpretation, and not be confined to endowments heretofore existing. And certainly in practice there had been a larger interpretation adopted. He thought, as the Bill stood, it did raise a little doubt as to how this Bill and the old Regulation were to work together. By Act XX of 1863 the Board of Revenue had been relieved from the superintendence of those endowments which were purely religious, or which were partly religious, so far as regards the religious part of the endowments. There had been a great practical difficulty in separating the religious from the secular portion of the endowment, and no doubt the action of the Board had been very largely confined by that difficulty, and had not been extended to many cases to which it should have been extended. He thought it would be better to adopt the amendment which the hon'ble member opposite (Mr. Beaufort) proposed, so that interference in all these matters should be

vested in trustees appointed under this Act; but it might be advisable to put in some saving clause as to trustees existing before the Act came into operation, so as not to interfere with the management of endowments for which due provision had already been made.

The Hon'ble MOULVIE ABDOOL LUTEEF said he was afraid that if some such provision as that proposed by the hon'ble member opposite (Mr. Beaufort) were not introduced in the Bill, there would be great difficulty in connection with endowments which had been in the hands of the Board of Revenue for a long time; and he also thought that the addition of some words should be made with reference to such endowments which had already been made over to trustees who were under the superintendence of the Board of Revenue. He thought that some such addition was necessary, otherwise there would be a clashing of trustees, and confusion would take place.

The Hon'ble the ACTING ADVOCATE-GENERAL said his remarks did not depend entirely on the construction which he thought ought to apply, and which he applied to grants before the passing of Regulation XIX of 1810, but also that on the face of the Bill it applied to cases where there were no living trustee or trustees capable of being appointed. Therefore any endowment vested in the Board of Revenue would be an endowment in respect of which there was a living trustee. But inasmuch as the hon'ble member on his right (Mr. Beaufort) felt some alarm upon the subject, he thought that the new section 8, proposed by the hon'ble member in charge of the Bill, ought rather to apply in preference to the amendment of the other hon'ble member, as the proposed section 8 simply said that the provisions of this Act had nothing to do with the provisions of Regulation XIX of 1810. He thought that that might well be done in order to allay doubts that had been expressed, although he himself did not share those doubts in the smallest degree.

HIS HONOR THE PRESIDENT said that he was ashamed to say that he had not made himself acquainted with this subject so well as he ought to have done. It seemed to him, as far as he could gather from the debate that had arisen, that it was not only a question as to the wording of the Bill, but also as to what substantially the wishes of the Council were. Some endowments for secular purposes were now administered under the superintendence of the Board of Revenue, and the question was whether they should remain under that supervision or be transferred to the management of trustees appointed under this Bill. It was very necessary that the Council should settle the substance of the Bill before they proceeded to settle its form—whether land left for these purposes should be made over to the new Committees, or remain as heretofore under the superintendence of the Board of Revenue.

The Hon'ble MR. BEAUFORT said that he thought his honorable and learned friend the Advocate-General had misapprehended the provisions of Regulation XIX of 1810 when he said that by that law the Board of Revenue was constituted the trustee of any endowment. The management of the endowment was entrusted to the Board, and the Board was required to recommend persons

whom the Government might constitute trustees. In Mr. Beaufort's opinion therefore it was a mistake to say that this Bill, which proposed to deal with endowments of which there was no living trustee, would necessarily not be applicable to any endowment to which Regulation XIX was applicable. If this Bill should be passed without any section defining its relation to that law, and making the one harmonize with the other, cases would arise in which it would be impossible to say whether the Board or the trustees appointed under this Act had the legal charge. The Regulation, which extended beyond the scope of the Bill, could not be repealed, but it was, he thought, absolutely necessary to say that the Regulation should cease to have effect in regard to any endowment to which the new law might be applied, or to alter the provisions of the Bill.

His Honor the President said he understood the hon'ble member on his left (Mr. Schalch) to say that the functions of the Board of Revenue in respect of endowments had been exercised with difficulty and imperfectly, and that the hon'ble member recommended that we should take away those functions and vest them in the new trustees to be appointed under this Bill. If the Council were not willing to accept that view, then perhaps the present Bill might be accepted without any material alteration. But if the Council thought fit to make any material alterations in the Bill, we should be bound to postpone its passing to another meeting. The question therefore was whether the Council would accept this Bill as it stood.

The Hon'ble Mr. Schalch said that in a discussion of this kind he did not think that the Council could come to any definite conclusion. He thought it would be preferable, unless there was any urgency in the matter, that the Bill should be recommitted and be brought up again at the next session of the Council.

The Hon'ble the Acting Advocate-General said that a very important amendment seemed to have been proposed by the hon'ble member on his right (Mr. Beaufort) which was not under the consideration of the Select Committee who had reported upon the Bill. The hon'ble member in charge of the Bill said that it was never intended that the Bill should refer to the endowment which fell under the provisions of Regulation XIX of 1810. If therefore the clause, as proposed by the hon'ble member, was adopted, the Advocate-General thought there would be no difficulty in passing the Bill now, if it be the wish of the Council to carry out that intention. But after what had fallen from the hon'ble member opposite (Mr. Schalch), he gathered that the Council would wish the Bill to be recommitted, in order that the Select Committee might consider how this Bill bore upon the old regulation, and if that should be done, he would support the proposal if an immediate decision upon the subject be not pressed.

The Hon'ble Mr. Bernard said that he thought there was no urgency in passing a Bill of this kind, and if the Council considered that the Board of Revenue ought to be relieved from the management and superintendence of

endowments, the matter could be taken into consideration by the Select Committee. There were a good many endowments which it would be desirable to vest in trustees as soon as possible; but the money would not be lost by a little delay, and he did not see any necessity to pass an incomplete Bill now. Therefore he preferred the suggestion of the hon'ble member on his right (Mr. Schalch), that the Bill be referred back to the Committee, and that their report be considered at the next sitting of the Council.

HIS HONOR THE PRESIDENT observed that he thought it was the general opinion of the Council that the Bill should be recommitted; he would therefore move that it be referred back to the Select Committee, and that the Hon'ble Mr. Schalch and the Hon'ble Mr. Beaufort be added to the Committee.

The motion was agreed to.

## ADJOURNMENT OF THE COUNCIL.

HIS HONOR THE PRESIDENT said that he was not likely to ask the Council to sit again during the present season. The remaining important work before the Council was the Embankment Bill. That being a Bill involving very difficult considerations, the Select Committee to which it was entrusted had worked upon it very earnestly, but they had not yet felt themselves in a position to make their report. He thought it possible that though the Council might not sit, the Select Committee might be able to meet in the interim and submit their report. If they should do so, His Honor would take it upon himself to order the publication of the Bill in the Gazette, and hon'ble members would have an opportunity of duly considering and digesting it before the next meeting of the Council. The number of Bills before the Council had not been very large, but he could not dismiss the members without thanking them very earnestly for the labor which they had bestowed upon the work of the Council. Although their work had not been much before the public, there had never been a session in which work more laborious, more useful, and more constant, had been done by the members of this Council. The main achievement of the Council during the session had been the Municipal Bill. That Bill was but one Bill, but it was at all events a very big Bill, and he might say that it was a very important Bill. His Honor's own view was that taking the Road Cess Bill of the last session and this Bill which the Council had just passed, and which they might hope would receive the sanction of the Viceroy and would soon become law, the Council would have passed a very complete code of local self-government for Bengal. We shall have given to Bengal a system of local self-government which will enable it to cover the country with roads, canals, and means of communication, and we shall have given to the country the means to introduce, not suddenly and all at once, but gradually, municipal self-government everywhere. The Municipal Bill was designed to meet the wants of communities of every class. It proposed to introduce, wherever people were ready to receive it, a system of self-government of an advanced

and complete character in cities, of a less complete and expensive character in towns, and of a very simple character in rural villages. The principle upon which the Government had proceeded in the measures of the last two sessions had been this, that for benefits exclusively material, that was to say, for the improvement of communications and facilities of intercourse in the country—for those material improvements which would add to the value of the fixed property of the country—immovable property only should be taxed. But for all other matters—for education, for conservancy which affected health, and for other benefits which were the result of intelligent self-government—taxation should extend, not only to immovable property, but to all kinds of property. That had been the principle which had been affirmed by the Bill of last session and by the Bill which the Council had that day thought fit to pass.

The Bill had left it optional with communities to deal with very many subjects. It had attempted to deal by way of compromise with one very important subject which had considerably occupied the attention of this Council, and which had been the subject of very great discussion, both official and non-official, namely, the vastly important subject of education. It had been said, and with truth, that the educational destitution of the masses of the people of this country was very great and very lamentable. The Government of India, being very much alive to the responsibility which we had incurred by the existence of such a state of things, had very much pressed for several years past upon the Government of Bengal the necessity of doing something towards educating the mass of the people. The Council were aware that the question of local taxation first arose to some degree with regard to this particular subject of education. The discussion regarding a cess upon land also was connected with that subject. His Honor had informed the Council in the course of last session that the Government of Bengal did not see its way to make education a special tax upon land; we rather thought that property in general should be taxed for that object and not any kind of property in particular. At the same time that we felt the immense importance of educating the people, we also thought that in starting the machinery provided by this Bill we should not undertake too much in too sudden a manner. Well, the clauses of this Bill, which dealt with the subject of education, represented the compromise which the Council had been pleased to accept; the result of that compromise was this, that in towns, to which this Act might be extended, education to a certain extent should be insisted on; that is to say, if it was found that in populous places the means of primary education did not exist, the Council thought fit to give to the Government certain powers to insist on those places which were rich enough providing the means of primary education. On the other hand, with regard to rural villages, we had thought that the time for compulsion in respect of education had not yet arrived; the devotion of a portion of their funds to education would in village municipalities be optional. But our hope was, that seeing, as they must see, the advantages of education, the more advanced villages would take advantage of the provisions contained in this Bill, and the Government would help those who helped themselves to a reasonable extent.

The Council would observe that the maximum of taxation for all purposes was very strictly limited under this Bill. No doubt the conservancy clauses applicable to first and second class municipalities were in themselves somewhat formidable, but they were only to be introduced at the discretion of the Government. For himself, HIS HONOR could say that although he had no doubt that conservancy was an excellent and most desirable thing, he was not inclined to press it too hard, and he hoped it would be understood by the people that he did not intend to introduce these conservancy clauses too rapidly. He was checked too in the most effectual manner by the maximum limit of taxation, which it was the pleasure of the Council to introduce in the Bill. It was not probable that we should be able to introduce very expensive conservancy within the limits which were laid down in the Bill, and it was not the wish of the Government to do so. Our action in that respect would be gradual and moderate; but as far as conservancy was introduced, it would be made as effectual as it was possible to make it.

The limit of taxation under the Bill was in truth extremely moderate. In the case of rural villages it was only four annas or six pence per head per annum; in the towns it was twelve annas or eighteen pence per head; and in the case of cities it was not very large. He did not therefore think that there were reasonable grounds for the extreme apprehension with regard to the burden of taxation which had been expressed in the petitions which had been submitted to the Council. And although this ignorant impatience of measures of taxation was not an unnatural feeling, at the same time he would say that he thought the people of Bengal, or, at all events, those who professed to be the organs of the people, were very unreasonable in regard to this matter of taxation. As he had said on a former occasion in another place, HIS HONOR still maintained that of all the provinces in India, this enormous province was the most lightly taxed. It was not only lightly taxed, but it was a province in which, as distinguished from all other provinces in India, the Government had surrendered an enormous land revenue in favor of a private proprietary which had been created and sprung up under British rule—that enormous proprietary class who derived a great income from the land, and who paid hardly any tax at all. He did think that the rich and well-to-do Bengalees were comparatively very lightly taxed as regards the Imperial revenue.

Well then came the new system of provincial self-government and provincial finance. Provincial finance having been introduced, it was with each local Government a matter of very anxious consideration whether new provincial taxation ought not to be introduced. It certainly did seem at first sight, in this great province, in which the education of the upper classes and civilization had been developed and had gone so far ahead, and in which the general taxation was so light—that it was not unreasonable that provincial taxation should be imposed to meet the growing necessities of a civilized and little taxed community. There had been, he thought, somewhat of ingratitude in charging the Government with rapacity

in regard to the very moderate amount of local self-taxation which this Bill proposed, while not a word had been said regarding the fact that we had altogether omitted to propose a single scheme of provincial taxation. In that respect this province was singular; for the fact was that there was no other province in which it had not been proposed to impose provincial taxation since the new scheme of provincial self-government had come into operation. In all the other provinces new schemes of provincial taxation had been proposed, some of which were passed and some of which had been withdrawn. Really when he saw how little people seemed to appreciate the absence of such taxation, he might almost say that it would have served them right if he had introduced several very heavy Bills to frighten them, and then earned their gratitude by retiring the heaviest Bills. But as the matter now stood, we had not only not passed, but we had never even proposed, any measure for provincial taxation: we had restricted ourselves to this little *modicum* of local self-taxation, and yet we were abused all the same.

His Honor was, he was free to confess, at first inclined to think that it might have been his duty to propose some provincial taxation; but he was happy to say that they were in that position that he hoped that, for the present at least, there would be no need for bringing forward any such proposal. The Government of Bengal had administered the finances with which the Government of India had thought fit to entrust it with an especial view to economy and the interests of the people of Bengal. On a former occasion he had informed the Council—no, he had not informed the Council about the state of the finances, because he had not been allowed to do so—but he had caused to be published in the Gazette a statement which showed that the Government had saved a considerable amount out of the funds placed at its disposal. He ventured now to say a few words upon this subject. Since we had received the actuals of the past year we were fortunate enough to find that by dint of small economies here and there, and by continually looking to the interests of the country, we had saved not only what we expected, but a good many lakhs more; we were now in that position that we hoped to confer upon the country considerable benefits without imposing upon the people additional taxation. The views which the Government of Bengal held on the subject of taxation, and which the Council had been good enough to accept, and which he hoped the country would accept, were represented by these Bills for local self-government. This system of self-government involved a certain amount of local self-taxation for the benefit of the tax-payers. The Government in effect said this—"Imperial taxation you pay for the protection afforded to you by the army, the police, courts of justice, and such like, supplied from imperial sources; from the same source a certain moderate sum is allowed for education, medical aid, and other benefits; the rest you must do for yourselves by this system of local self-government which we have given to you." He hoped he might be able to say to municipalities of the smaller kind—"If you help yourselves we will with pleasure assist you; we will assist those who help themselves." He hoped he

should be able to give a very considerably increased grant for the education of the masses, that was to say, for village schools; that he should be able to give a very considerable portion of the cost of such schools to those villages which under the provisions of this Act established schools. We had saved the money by our economies, and he hoped to devote it in this and other ways to promote self-help among the people. That being so, he might say that so far as taxation was concerned, the Road Cess Bill and the Municipal Bill taken together formed a complete scheme of local rating beyond which it was not the intention of the Government to go at present; for himself and the present time he hoped that there might be a sort of finality in the present scheme, and that no more provincial or local taxation would be required. We should devote ourselves to the honest working of these Bills for the good of the country. As regards the general frame-work of municipal self-government, the Council had, His Honor believed, enacted a complete scheme, which might require further amendment in detail, but to the general character of which the Government did not at present propose to make any large additions.

The Council was adjourned *sine die*.

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